ey of this
is the word
e". You must
ve give notice
ever you do
ing."

J. J. Townsend
June 1899.

(New York State
Statutes Cited
1N -

CONTENTS.

CHAPTER XXII.

Definitions and Regulations

SECT

TITLE I.—General definitions and rules of construction..... 3333
II.—Provisions regulating the effect and application of this act..... 3344

CHAPTER XXIII.

Condemnation Law.

TITLE I.—Proceedings for the condemnation of real property..... 3387
II.—Proceedings for the sale of corporate real property..... 3390
III.—Proceedings for enforcement of mechanics' liens on real property..... 3396
IV.—Proceedings to enforce lien on vessels..... 3419

fee, compensation, or reward, for the commitment, detaining, custody, release, or discharge of a prisoner, other than the expressly allowed therefor by law.

Id., § 5.

§ 118. Prisoner, how conveyed to jail through another county.

A sheriff or other officer, who has lawfully arrested a prisoner may convey his prisoner through one or more other counties, the ordinary route of travel, from the place where the prisoner was arrested, to the place where he is to be delivered or confined.

2 R. S. 426, § 6.

§ 119. Officer or prisoner not liable to arrest.

A prisoner so conveyed, or the officer having him in custody, not liable to arrest in any civil action or special proceeding, while passing through another county.

Id., § 7, am'd.

§ 144. [Am'd, 1895.] What officer to act in case sence, etc.

If the county judge, or the presiding justice of the division of the supreme court of the first department, is unable to act, or his office is vacant, a designation, or th tion or modification thereof, as prescribed in this article made, in any county, except New-York, by the specia judge or the district-attorney, or, in the city and county York, by any justice of the appellate division.

L. 1895, ch. 946.

the escape
out the as-
of the so-
his volun-

§ 202. [Adde
appeals.

Each judge of
remove a clerk,
appointing him
sation to be fix
dollars a year,
certificate of th

L. 1897, ch. 221. In

§ 203. [Adde
appeals.

The board of
maintained by t
court of appeal
his use, suitabl
case of the refu
request, the jud
offices suitable
county charge.
where there is
place of residen
expense thereof
audit and warr

L. 1897, ch. 221. In effect April 8, 1897.

§§ 204-208. [Repealed; Laws 1894, ch. 135.]

[illegible] or a certificate of such a [illegible], or any [illegible] thereof, or of the service of any [illegible], have the same force and effect, as the like re- [illegible] certificate of a sheriff.

ch. 400, §§ 2 and 3; and L. 1872, ch. 629, § 6, as affected by L. [illegible], and 2 R. L., § 114; L. 1895, ch. 946.

The time of such a disability is not a part of the tim in this title, for commencing the action, or making the interposing the defence or counterclaim; except that th limited cannot be extended more than ten years, after bility ceases, or after the death of the person so dis

Co. Proc., § 88.

lirectors, etc.,

t a director or
' association, to
force a liability
such an action
e of action has

, must be in

writing, signed
only competent
rely to take a
is section does
interest.

liabilities.
pecified in this
nst a sheriff or
n the cause of

ation upon con-
for life;
he time limited
that the time
years by any
more than one

year after the disability ceases.
M., § 101.

§ 397. Defence or counterclaim.

A cause of action, upon which an action cannot be maintained, as prescribed in this title, cannot be effectually interposed as a defence or counterclaim.

ought in, and
supplemental
he same form
ereof, it must
amended com-
f them as the
r, relating to
e of an orig-
ness.

§ 499. Objection; when deemed waived.

If such an objection is not taken, either by demurrer or an the defendant is deemed to have waived it; except the obje to the jurisdiction of the court, or the objection that the plaint does not state facts sufficient to constitute a caus action.

Co. Proc., § 148.

answer. The admission must be made a part of the judg roll.

Co. Proc., part of § 246, am'd.

§ 513. Dilatory defences to be verified.

A defence which does not involve the merits of the action, not be pleaded, unless it is verified as prescribed in title s of this chapter.

From 2 R. S. 352, § 7 (2 Edm. 364).

ion of the time,
t the release of
, shall not be
or warrants of
s, take jointly,
rmitted by this
ubsequent war-
erfere with the
ntiff.

which the defenc
necessary to perf
defendant must
stituted in place
jointly, in an ac
court or judge m
of substitution,
indemnity and
without respect t
undertaking, or o
the same as thos
force, except wh
by law.

§ 711. Cancell

At any time af
or annulled, or t
property attache
plication of any
deems just, direc
ing the property
county where it
made by a note, t
ring to the order
clerk's office, a c
filed therein.

Co. Proc., part of § 132, am'd and enlarged.

§ 712. When sheriff to return warrant and his proceedings.

Where a warrant of attachment has been vacated or annulled, the sheriff must forthwith file, in the clerk's office, the warrant, with a return of his proceedings thereon. Upon the application of either party, and proof of the sheriff's neglect, the court may direct him so to do, forthwith, or within a specified time.

Id., § 242, am'd, and consolidated with so much of 2 R. S. 13, § 66 (2 Edm. 14), as relates to the return of the warrant.

court, the ju
receiver was
time, remove
new sureties,
sions of this
sion is made
for increasin
who, having
tion, before
to the surety
present his a
for the hear
given to such
on the petiti
and in no ca
allowed, unle
have first bec
of such recei

See post, §§
ch. 94.

**§ 716. [Am
property.**

A receiver,
in an action
special proce
may take an
purposes as t
from time to time, respecting the disposition thereof.

L. 1895, ch. 946, L. 1845, ch. 112, § 1 (4 Edm. 552), am'd.

Id., § 244, the last sentence but one am'd.

ARTICLE THIRD.

General and miscellaneous provisions.

Sec. 719. Arrest, injunction, and attachment; when not to be granted together.
720. Counterclaim, provisional remedies.

§ 719. [Am'd, 1879.] Arrest, injunction, and attachment; when not to be granted together.

Where application for an order of arrest, an injunction, and a warrant of attachment, or two of them, is made, in the same action, against the same defendant; and it satisfactorily appears that, under the particular circumstances of the case, two or all of them are not necessary for the plaintiff's security, the court or judge may, in its or his discretion, require the plaintiff to elect between them. Where an application is made to obtain, vacate, modify, or set aside an order of arrest, injunction order, or warrant of attachment, the court or judge must finally decide the same, within twenty days after it is submitted for decision.

§ 720. [Am'd, 1879.] Counterclaim, provisional remedies.

Where the defendant interposes a counterclaim, and thereupon demands an affirmative judgment against the plaintiff, his right to a provisional remedy is the same as in an action brought by him against the plaintiff, for the cause of action stated in the counterclaim, and demanding the same judgment. And for the purpose of applying to such a case the provisions of this act, the defendant is deemed the plaintiff, the plaintiff is deemed the defendant, and the counterclaim so set forth in the answer is deemed the complaint.

ed.
withheld by any
led and used, in-

§ 727. Order of court; when necessary to amend.

A process, pleading, or record, shall not be altered, by the clerk or any other officer of the court, or by any other person, without the direction of the court, or of another court of competent authority; except in a case where a party, or his attorney, is specially authorized by law to amend a pleading.

2 R. S. 425 (3 Edm. 445), am'd.

§ 728. Disregarding defects in affidavits.

The want of a title, or a defect in the title, of an affidavit, does not impair it, if it intelligibly refers to the action or special proceeding, in which it is made.

Gen. Rev., § 498.

§ 729. Certain bonds, etc., when sufficient.

A bond or undertaking, required by statute to be given by a person, to entitle him to a right or privilege, or to take a proceeding, is sufficient, if it conforms substantially to the form therefor, prescribed by the statute, and does not vary therefrom, to the prejudice of the rights of the party, to whom, or for whose benefit, it is given.

2 R. S. 556 (3 Edm. 576), am'd.

§ 730. Amending defects in bonds, etc.

Where such a bond or undertaking is defective, the court, officer, or body, that would be authorized to receive it, or to entertain a proceeding in consequence thereof, if it was perfect, may, on the application of the persons who executed it, amend it accordingly; and it shall thereupon be valid, from the time of its execution.

Id., § 84, am'd.

notice of acceptance is not thus given, the offer cannot b
in evidence, upon the trial; but, if the recovery is no
favorable to the defendant than that so offered, he will
entitled to recover costs from the time of the offer, bu
pay costs from that time.

Co. Proc., remainder of § 385, am'd.

§ 740. Offer and acceptance, by whom subscribed.

Unless an offer or an acceptance, made as prescribed i
of the last four sections, is subscribed by the party ma
his attorney must subscribe it, and annex thereto his a
to the effect, that he is duly authorized to make it, in
of the party.

§ 741. [Repealed, 1877.]

§ 742. [Repealed, 1877.]

e vacated by the judge or judges holding the term at which the preferred cause is noticed for trial or hearing, or by such other justice, or at such other term of court, or at such other time as shall be prescribed by the general or special rules of practice. But a preliminary order is not requisite in a case embraced within subdivision first or second of the last section but one, and the order in a case embraced within subdivision six thereof may be made ex parte, and is conclusive. Where no order is required, a claim for preference, specifying the provision of law under which the claim is made, may be inserted in the note of issue to be filed with the clerk, and it shall then be the duty of such clerk to place such cause in its proper place among the preferred causes at the head of the calendar; except that in the counties of New York, Kings, Queens and Erie, and the seventh judicial district, no action or special proceeding shall be placed as a preferred cause upon the calendar of any circuit court or trial term or special term of any court as herein provided, but the party desiring a preference of any cause shall serve upon the opposite party, with his notice of trial, a notice that an application will be made to the court at the opening thereof, or to such justice or other term of court or at such other time as shall be prescribed by the general or special rules of practice, for leave to move the same as a preferred cause, and if the right to a preference depends upon facts which do not appear in the pleadings or other papers upon which the case is to be tried the notice must be accompanied by an affidavit showing such facts. In said counties of New York, Kings, Queens and Erie and in the seventh judicial district, the application for a preference shall be made at the opening of the court, or to such justice or other term of court, or at such other time as shall be prescribed by the general or special rules of practice, and if it shall appear that the cause is entitled to a preference and is intended to be moved for trial at or for the term for which the application is made, the court or justice may direct that it shall be so heard.

L. 1896, ch. 410; L. 1898, ch. 140; L. 1900, ch. 172. In effect Sept. 1, 1900.

§ 794. [Repealed Jan. 1, 1896; L. 1895, ch. 946.]

§ 795. [Repealed Jan. 1, 1896; L. 1895, ch. 946.]

[illegible] in the morning a[illegible] [illegible] evening, with a person of suitable age and discretion.

Substitute for Co. Proc., §§ 409, 410, 411; L. 1897, ch. 40. In effect Sept. 1, 1897.

§ 798. Double time when served through the post-office.

Where it is prescribed in this act, or in the general rules of practice, that a notice must be given, or a paper must be served, within a specified time, before an act is to be done; or that the adverse party has a specified time, after notice or service, within which to do an act; if service is made through the post-office, the time so required or allowed is double the time specified; except that service of notice of trial may be made, through the post-office, not less than sixteen days before the day of trial, including the day of service.

Co. Proc., § 412, am'd.

§ 799. When paper to be served on attorney; when service not required.

Where a party has appeared, a notice or other paper, required to be served in an action, must be served upon his attorney. If a defendant has not appeared, service of a notice or other paper, in the ordinary proceedings in the action, need not be made upon him, unless he is actually confined in jail, for want of bail.

Id., §§ 414 and 417, consolidated.

§ 800. When service may be made on clerk, for non-resident.

Where a party to an action, who has appeared in person, resides without the State, or his residence cannot, with reasonable diligence, be ascertained, and he has not designated an address, within the State, upon the preceding papers, service of a paper upon him may be made, by serving it on the clerk.

Id., § 415.

§ 801. Service through branch post-office in New-York city.

In the city of New-York, where a paper is served, or a return is made, through the post-office, the deposit of the package in a branch post-office has the same effect, as a deposit in the general or principal post-office of that city.

§ 802. This article not applicable to service of summons, etc.

This article does not apply to the service of a summons, or other process; or of a paper to bring a party into contempt; or to a case where the mode of service is specially prescribed by law.

Id., § 418, and part of id., § 408.

pany a
as to p
part th
an ord
direct.
L. 1894, c

§ 814.
officer
Wh
by law,
people
person
the pro
may m
conditi
procuri
be mad
city co
or und
a judg
court.
directe
disposi
L. 1895, ch. 990.

§ 815. Bonds, etc., not affected by change of parties.

A bond or undertaking, given in an action or special proceeding, as prescribed in this act, continues in force, after the substitution of a new party in place of an original party, or any other change of parties; and has thereafter the same force and effect, as if then given anew, in conformity to the change of parties.

§ 816. Id.; to be filed.

A bond or undertaking, required to be given by this act, must be filed with the clerk of the court; except where, in a special case, a different disposition thereof is directed by the court, or prescribed in this act.

Co. Proc., § 423, am'd.

§ 841. [Am'd, 1891.] Presumption of death in certa cases.

A person upon whose life an estate in real property depen who remains without the United States, or absents himself in t state or elsewhere for seven years together, is presumed to dead in an action or special proceeding concerning the property which his death comes in question, unless it is affirmativ proved that he was alive within that time. And where in a action or partition in this state any portion of the proceeds of t sale of real property is or has been paid into court, or paid the treasurer of any county for any unknown heirs, and has mained unclaimed for twenty-five years, after such payment any person entitled thereto, the lapse of twenty-five years af such payment raises the presumption of the death of such t known heirs at the time of the sale of such real property and fore such payment, and after the lapse of twenty-five years af such payment it shall be presumed that there were no such t known heirs living at the time of such sale or payment, and any action or proceeding taken for the purpose of distribut and paying over such proceeds, all such unknown heirs are p sumed and they shall be presumed to have been dead at the ti of such sale and before such payment into court, or to t treasurer of any county.

1 R. S. 749, § 6, am'd; L. 1891, ch. 364.

§ 846. [Am'd, with.

The oath mus son who so desi omitted: "You While so swear option.

2 R. S. 407, § 83, L.

§ 847. Whe

A solemn dec be administere tious scruples " You do solem

Id., § 84.

§ 848. [Am'd,

If the court o as a witness, is lieu of, or in a his opinion, mo in its or his dis

Id., § 85; L. 1899, c

§ 849. Swearing persons not Christians.

A person believing in a religion, other than the Christian, may be sworn according to the peculiar ceremonies, if any, of his religion, instead of as prescribed in section 845 or section 846 of this act.

Id. 408, § 86.

§ 850. Court may examine witness.

The court or officer may examine an infant, or a person apparently of weak intellect, produced before it or him, as a witness, to ascertain his capacity and the extent of his knowledge; and may inquire of a person, produced as a witness, what peculiar ceremonies in swearing he deems most obligatory.

Id., § 89, am'd.

§ 851. [Am'd, 1890.] Swearing falsely in any form, perjury.

A person swearing, affirming, or declaring, in any form, when an oath is authorized by law, is lawfully sworn, and is guilty of perjury, in a case where he would be guilty of the same crime, if he had sworn by laying his hand upon the gospels.

Id., part of § 90, am'd; L. 1890, ch 340. In effect Sept. 1, 1890.

uired by sub-

ere a subpoena
. section 866 or
to attend, and
oena or order is
per is produced
ation, or in the
dge to identify
hich it is used.
of the corpora-
out a duces te-

factory proof, by affidavit, that there is good reason to
that the ends of justice will be better promoted thereby, t
the issuing of a commission, notwithstanding that a com
can be executed, in the country to which they are sent.
rogatory can be issued only to examine one or more wi
upon written interrogatories, annexed thereto; which m
framed and settled, and the depositions must be returned,
scribed in this article, with respect to the interrogatories a
to a commission, and the depositions taken thereunder.

§ 919. [Am'd, 1899.] Taking and return of deposit

The officer, or commissioner, before whom a witness in a case specified in this article, must take down his t in writing, and must annex thereto copies of all books a produced or such parts thereof as shall be required, a certify and transmit it to the court in which the action special proceeding is pending, as the practice of th requires.

L. 1899, ch. 502. In effect Sept. 1, 1899.

§ 920. [Repealed May 3, 1899; L. 1899, ch. 502. In ef 1, 1899.]

proceedings, kept by him, pursuant to law, accompanied w proof of his handwriting; or by a copy of the minutes, sworn by a competent witness, as having been compared with the or inal entries, with proof that those entries were in the handwi ing of the justice.

2 R. S. 269, § 248.

§ 941. [Am'd, 1894.] Ordinances, etc., of cities, villag etc.

An act, ordinance, resolution, by-law, rule or proceeding of t common council of a city, or of the board of trustees of an corporated village, or of a local board of health of a city, to or incorporated village or of a board of supervisors, within state, may be read in evidence, either from a copy thereof, ce fied by the city clerk, village clerk, clerk of the common coun clerk or secretary of the local board of health, or clerk of board of supervisors; or from a volume printed by authority the common council of the city, or the board of trustees of the lage or the local board of health of the city, town or village, the board of supervisors.

L. 1894, ch. 203.

§ 955. [Inserted, 1892.] Public records in New Y county.

All maps, surveys and official records, which shall have bee record or on file in the office of either the register of the and county of New York, or the surrogate of said city, or a the courts of record of said city, or the clerk of the and county of New York, or any of the departments of said as enumerated in section thirty-four of the New York city solidation act (chapter four hundred and ten, laws of eigl hundred and eighty-two), or in the office of the registers, s gates, commissioners of public works, or kindred departme park department, for a period of twenty years or upwards to such trial, shall be presumptive evidence of their contents shall be receivable in evidence as such upon any trial in a the courts of this State in any controversy pending therein tween any parties.

L. 1892, ch. 522.

§ 956. [Am'd, 1877.] Documents from foreign count how authenticated.

A copy of a patent, record or other document remaining of ord in a public office of a foreign country, certified accordi the form in use in that country, is evidence when authentic as follows:

1. By the certificate under the hand and official seal of a missioner appointed by the governor to take the proof or ack edgment of deeds in that country, to the effect that the pa record or document is of record in the public office, and tha copy thereof is correct and certified in due form.

2. By a certificate under the hand and official seal of the s tary of State, annexed to that of the commissioner, to the effect as prescribed by law for the authentication of the ce cate of such a commissioner, upon a conveyance to be rec within the State. The certificate of the commissioner, thu thenticated, is presumptive evidence that the copy of the pa record or document is certified according to the form in use i foreign country.

L. 1875, ch. 186, portions of §§ 1, 2, 8 and 9.

injury, and such proof shall be presumptive evidence of owne ship at the time of such trespass or injury, but such presumptio may be rebutted by the defendant by showing ownership of sai lands at the time of said trespass or injury, in some person othe than the plaintiff.

L. 1896, ch. 32. In effect Sept. 1, 1896.

§ 961. Surrogates, clerks, etc., to search files, and t certify, etc.

A surrogate, county clerk, register, clerk of a court, or othe person, having the custody of the records or other papers in public office, within the State, must, upon request, and upon pa ment of, or offer to pay, the fees allowed by law, or, if no fe are expressly allowed by law, fees at the rate allowed to a coun clerk for a similar service, diligently search the files, paper records, and dockets in his office; and either make one or mo transcripts therefrom, and certify to the correctness thereof, an to the search, or certify that a document or paper, of which th custody legally belongs to him, cannot be found. If he refuse or unreasonably neglects or delays, to make such a search, or furnish such a transcript or certificate, or makes a false certi cate, he is guilty of a misdemeanor.

L. 1847, ch. 470, § 40 (4 Edm. 588), am'd. See ante, § 921.

§ 962. Saving clause.

Nothing in title fourth of this chapter prevents the proof of fact, act, record, proceeding, document, or other paper or writin according to the rules of the common law, or by any other co petent proof.

2 R. S. 397, part of § 28 (2 Edm. 413), and L. 1846, ch. 240, § 2 (4 Ed 642).

trial must be filed, and the judgment rendered must l
in the last named county.

§ 991. This article applicable only to the court.

This article is applicable to an action in the supı
only.

istrict, or requires
en in said judicial
id order shall be
ors in said judicial
such services shall
work.

new trial or grant to either party the judgment which the facts warrant.

L. 1895, ch. 946.

§ 1023. [Repealed, 1894.]

§ 1024. Qualifications of a referee.

A referee, appointed by the court, must be free from all just objections; and no person shall be so appointed, to whom all the parties object, except in an action to annul a marriage, or for a divorce, or a separation. A judge cannot be appointed a referee, in an action brought in the court, of which he is a judge, except by the written consent of the parties; and, in that case, he cannot receive any compensation as referee.

Co. Proc., part of § 273.

§ 1025. Several referees may be appointed.

Where the court is authorized to appoint a referee, it may, in its discretion, appoint either one or three. And where a reference is made by consent of the parties, they may select any number of referees, not exceeding five.

Substitute for Co. Proc., part of § 273.

§ 1026. Proceedings regulated where there are several referees.

Where the reference is to more than one referee, all must meet together, and hear all the allegations and proofs of the parties; but a majority may appoint a time and place for the trial, decide any question which arises upon the trial, sign a report, or settle a case. Either of them may administer an oath to a witness; and a majority of those present, at a time and place appointed for the trial, may adjourn the trial to a future day.

2 R. S. 384, § 46 (2 Edm. 399).

tion for any
thirteen of sect

From 2 R. S. 4
to exemptions, wi

§ 1032. Wh

The court n
juror, in either
1. Where it
2. Where it
claims the ben
Where a per
in this section,
name.

Id., subds. 1, 2

§ 1033. Whe

Upon satisfa
which a perso
from serving
either of the f
1. Where he
civil office, the
his attendance
2. Where he
serving as such
3. Where, fo
or of the juror
his own health
his absence; or
from properly discharging the duties of a juror.

Where a person is excused, in either of the cases specified in this section, the ballot, containing his name, must be returned to the box from which it was taken.

2 R. S. 416, part of § 35, amd

§ 1034. Application of this article, as respects New-York and Kings counties.

Section 1029 of this act applies throughout the State. The remainder of this article does not apply to the city and county of New-York, or the county of Kings.

See title 4 of this chapter.

verdict, or the q
quires; and the
respect to the su
the party in who
must enter judg
different directio
specially prescrib
Co. Proc., part of

verdict, or the questions and findings thereupon, as the
quires; and the direction, if any, which the court giv
respect to the subsequent proceedings. Upon the appli
the party in whose favor a general verdict is rendered,
must enter judgment, in conformity to the verdict,
different direction is given by the court, or it is
specially prescribed by law.

Co. Prec., part of § 264.

§ 1270. Cl

Upon the
an assignme
a person enti
1260 of this
section, with
of the fees, a
a judgment
ment in his
an entry of
separate boo
entry, referr
assignment i

§ 1271. [R

§ 1272. To applies.

This article
a sum of m
and to an ex

the supreme
specified in
court of whic
upon such a

Co. Proc., § 3

§ 1276. [A
enforcing t

The clerk,
attach togeth
of the judgm
ment may b
same manne
action, rende
relating to a
quent thereto

Id., § 384, seco

§ 1277. Ex

Where the
all due, exec
collection of
must be in th
judgment for
name is subs
the sheriff, t
thereof, with
Notwithstand
the judgment shall remain, as security for the sum or sums to become due, after the execution is issued. When a further sum becomes due, an execution may, in like manner, be issued for the collection thereof; and successive executions may be issued, as further sums become due.

Id., remainder of § 384.

§ 1278. Confession by one of several joint debtors.

One or more joint debtors may confess a judgment for a joint debt, due or to become due. Where all the joint debtors do not unite in the confession, the judgment must be entered and enforced against those only who confessed it; and it is not a bar to an action against all the joint debtors, upon the same demand.

dismissing the sub
the court permits
sentatives, to file a
discretion, without
L. 1895, ch. 946; L. 1899,

dismissing the submission, without costs to either party; the court permits the parties, or, in a proper case their sentatives, to file an additional statement, which it may do discretion, without prejudice to the original statement.

L. 1895, ch. 946; L. 1899, ch. 526. In effect May 5, 1899.

[illegible]een perfected,
[illegible], of the ques-
[illegible]ation of those
[illegible]ed and settled,
[illegible]d annexed to
[illegible] to enable the
[illegible] a question of
[illegible] the case must
[illegible] the case upon
[illegible]ndered. The
[illegible] time, limited
[illegible]mitted to the
[illegible]e appellant to

[illegible]

[illegible]

bracing the county, in which the judgment or order appealed from is entered; unless an order is made, as prescribed in section 231 of this act, directing that it be heard in another department, or unless appeals pending in one department are transferred for hearing and determination to another, pursuant to article six, section one, of the constitution. The order made upon the appeal must be entered in the office of the clerk of the appellate division, and a certified copy thereof with the original case or papers upon which the appeal was heard, filed as provided in section thirteen hundred and fifty-three must be transmitted by the clerk upon payment of his fees, to the clerk of the county where the judgment or order appealed from was entered, and upon such certified copy of the order and the case or papers upon which the appeal was heard, the county clerk shall enter the judgment in his office.

Substitute for Co. Proc., portions of §§ 347 and 348; L. 1895, ch. 946.

scribed in this
w.

ption refers to §§ 1251, 1252, 1254, and 1255, ante. See, also, § 1314, ante.

1. This title qualified. Application of provisions
g to actions.

title does not confer the right to appeal from an order, ss, where it is specially prescribed by law, that the order be reviewed. The proceedings upon an appeal, taken as ed in this title, are governed by the provisions of this l of the general rules of practice, relating to an appeal in n, except as otherwise specially prescribed by law.

escribed in this
law.
nts. See, also, §

**1951. This title qualified. Application of provisions
ting to actions.**

his title does not confer the right to appeal from an order,
ess, where it is specially prescribed by law, that the order
st be reviewed. The proceedings upon an appeal, taken as
ibed in this title, are governed by the provisions of this
ad of the general rules of practice, relating to an appeal in
ion, except as otherwise specially prescribed by law.

Sale, redemptio

Sec. 1430. To wha
1431. Real pr
1432. Equity
1433. Directio
1434. Notice
1435. Propert
1436. Penalty
1437. Manner
1438. Sheriff
1439. Certifica
1440. Title t
1441. Rights
1442. Order t
1443. Proceed
1444. Mode a
1445. How w
1446. When a
1447. By wh
1448. Such r
1449. When
1450. What a
1451. Redemp
1452. Id., wh
1453. Subsequ
1454. When c
1455. When redemption [illegible]
1456. Original purchaser may redeem, when also a creditor.
1457. Creditor may redeem again under another judgment or mortgage.
1458. Redemption by person entitled to redeem part.
1459. Redemption by owners of undivided shares.
1460. Id., by creditors having liens on undivided shares.
1461. Right to redeem not affected by agreement.
1462. To whom money paid upon redemption.
1463. Certificate of satisfaction required to effect redemption by creditor.
1464. What evidence a redeeming judgment creditor must furnish.
1465. Id.; as to mortgage creditor.
1466. Id.; as to executor or administrator.
1467. Officers to keep papers open to inspection; when to file them.
1468. When redemption takes effect.
1469. Certificate to be given, when redemption made.
1470. Certificate may be acknowledged and recorded.
1471. When and by whom conveyance to be executed.
1472. To whom conveyance to be executed.
1473. When conveyance made to executor or administrator; effect thereof.
1474. Assignment must be acknowledged and filed.
1475. Under-sheriff or successor to act, if sheriff dies.
1476. Money may be paid, etc., to under-sheriff, or deputy-sheriff, who sold property.
1477. Application of this article to sale by coroner, or person specially appointed, etc.
1478. Id.; where coroner or person appointed dies, etc.

§ 1430. To what leasehold property this article applies.

The expression, "real property", as used in this and the succeeding article, includes leasehold property, where the lessee or his assignee is possessed, at the time of the sale, of at least five years unexpired term of the lease, and also of the building or buildings, if any, erected thereupon.

L. 1837, ch. 462, § 1; verbal amendments.

§ 1431. Real property held in trust, when liable to execution.

Real property, held by one person, in trust or for the *another*, is liable to levy and sale by virtue of an execu

may be effected, as prescribed in that section, for red
in a case, where the term of office of the sheriff, who n
sale, has expired.

§ 1478. Id.; where coroner or person appointed d

If, when the period for redemption expires, a coron
person specially appointed, by the court, who has s
property, by virtue of an execution, is dead, or has been r
or, in the case of a coroner, if he is no longer in office, t
must, upon the application of a person entitled to a deed,
a person, to execute the deed accordingly.

TITLE III.

Execution against the person.

Sec. 1487. In what cases execution may be issued against the person.
1488. Id.; against a woman.
1489. When execution against property must be first issued.
1490. Simultaneous executions not allowed against property and perso
1491. Id.; when debtor has been taken.
1492. New execution may issue after escape.
1493. Id.; when debtor dies charged in execution.
1494. Id.; when creditor discharges debtor after thirty days.
1495. New execution not to be enforced against real property sold, e

§ 1487. In what cases execution may be issued agai the person.

Where a judgment can be enforced by execution, as prescri in section 1240 of this act, an execution, against the per of the judgment debtor, may be issued thereupon, subject to exception specified in the next section, in either of the follow cases:

1. Where the plaintiff's right to arrest the defendant depe upon the nature of the action.

2. [Am'd, 1879.] In any other case, where an order of arr has been granted and executed in the action, and if it w executed against the judgment debtor where it has not b vacated.

Co. Proc., first two sentences of § 288.

§ 1488. [Am'd, 1879.] Id.; against a woman.

But an execution cannot be issued against the person of woman, unless an order of arrest has been granted and execu in the action, and, if it was executed against the judgm debtor, has not been vacated.

1 T. & C., Addenda, 10.

§ 1489. When execution against property must be fi issued.

Unless the judgment debtor is actually confined, with having been admitted to the liberties of the jail, by virtue of execution against his person, issued in another action, or of order of arrest or a surrender by his bail, in the same act an execution against his person cannot be issued, until an exe tion against his property has been returned, wholly or par unsatisfied. If he is a resident of the State, the execut against his property must have been issued to the county wh he resides.

Co. Proc., part of § 288, am'd.

§ 1490. Simultaneous executions not allowed agai property and person.

An execution against the person of the judgment debtor can be issued, without leave of the court, while an execution agai his property, issued in the same action, remains unreturned; an execution against his property cannot be issued, with

It is desired to preserve the lien, upon property situated in two or more counties, a similar affidavit and notice must be filed with, and a similar entry made by the clerk of each county.

2 R. S. 375, § 74, am'd.

Sec. 1487. In what
1488. Id., aga
1489. When e
1490. Simultan
1491. Id., whe
1492. New exe
1493. Id., wh
1494. Id., whe
1495. New exe

§ 1487. In wl the person.

Where a judg in section 1240 of the judgment exception specifi cases.

1. Where the upon the nature

2. [Am'd, 187 has been grant executed agains vacated.

Co. Proc., first t

§ 1488. [Am'd, 1879.] Id.; against a woman.

But an execution cannot be issued against the person of a woman, unless an order of arrest has been granted and executed in the action, and, if it was executed against the judgment debtor, has not been vacated.

1 T. & C., Addenda, 10.

§ 1489. When execution against property must be first issued.

Unless the judgment debtor is actually confined, without having been admitted to the liberties of the jail, by virtue of an execution against his person, issued in another action, or of an order of arrest or a surrender by his bail, in the same action, an execution against his person cannot be issued, until an execution against his property has been returned, wholly or partly unsatisfied. If he is a resident of the State, the execution against his property must have been issued to the county where he resides.

Co. Proc., part of § 288, am'd.

§ 1490. Simultaneous executions not allowed against property and person.

An execution against the person of the judgment debtor cannot be issued, without leave of the court, while an execution against his property, issued in the same action, remains unreturned; an execution against his property cannot be issued,

leave of the court, while an execution against his person, issued in the same action, remains unreturned.

2 R. S. 364, § 6 (2 Edm. 377).

§ 1491. Id.; when debtor has been taken.

Where a judgment debtor has been taken, and remains in custody, by virtue of an execution against his person, another execution cannot be issued, in the same action, against his person or his property, except in a case specially prescribed by law.

Id., § 7.

§ 1492. New execution may issue after escape.

If a judgment debtor escapes, after having been taken, by virtue of an execution against his person, he may be retaken, by virtue of a new execution against his person; or an execution against his property may be issued, as if the execution, by virtue of which he was taken, had been returned, without his having been taken.

Id., § 8.

§ 1493. Id.; when debtor dies charged in execution.

Where a judgment debtor, who has been taken by virtue of an execution against his person, dies while in custody, a new execution against his property may be issued, as if the execution, by virtue of which he was taken, had been returned without his having been taken.

2 R. S. 368, § 28 (2 Edm. 381). Sections 29 and 30 are in § 1495, post. See §§ 1380, 1381, ante.

§ 1494. Id.; when creditor charges debtor after thirty days.

At any time after a judgment debtor has remained in custody, by virtue of an execution against his person, for the space of thirty days, the judgment creditor may serve upon the sheriff a written notice, requiring him to discharge the judgment debtor from custody, by virtue of the execution. Whereupon the sheriff must discharge the judgment debtor, and return the execution accordingly. After service of such a notice, another execution, against the person of the judgment debtor, cannot be issued upon the judgment; but after his discharge, the judgment creditor may otherwise enforce the judgment, as if the execution, from which he was discharged, had been returned, without his having been taken.

L. 1857, ch. 427, § 1, amending 2 R. S. 34, § 17 (2 Edm. 34).

§ 1495. New execution not to be enforced against real property sold, etc.

A new execution against property, issued in a case specified in the last two sections, cannot be enforced against an interest in real property, including a chattel real, which was purchased in good faith, from the judgment debtor, after the recovery of the judgment upon which it is issued; or which was sold by virtue of an execution, issued upon a previous or subsequent judgment.

§ 1581. [Am'd, 1892, 1897.] Shares of infants.

Where a party entitled to receive a portion of the p
an infant, the court may direct it to be invested in
securities in the name and for the benefit of the infant,
direct it to be paid over to the general guardian of the
when the guardian shall have executed to such infa
with two sureties which shall be approved by the co
any of the moneys arising from the proceeds of such
have been paid to the county treasurer, and on due proof
money has remained uninvested in permanent securiti
space of three months, may direct the same to be p
general guardian of such infant upon his giving an u
in an amount and with securities satisfactory to the
the faithful execution of his trust. In the case of
residing without the state, and having in the state
where he or she resides a general guardian or perso
pointed under the laws of such state or country, to
and entitled, by the laws of such state or country, to t
of the money of such infant, the court, upon satisfac
of such facts and of the sufficiency of the bond or sec
by such general guardian or person in such state or
the certificate of a judge of a court of record of suc
country, or otherwise, may direct that the portion of s
arising upon such sale shall be paid over to such gener
or person.

L. 1892, ch. 538; L. 1897, ch. 602. In effect Sept. 1, 1897.

§ 1582. [Am'd, 1893.] Id.; of unknown and absen

Where a person has been made a defendant as an
person, or where the name of a defendant is unknown
the summons has been served upon a defendant without

interests of the infant, or of the idiot, lunatic, or habitual drunkard will be promoted by the partition, it may make an order authorizing the petitioner to agree to the partition proposed, and in the name of the infant, or of the idiot, lunatic, or habitual drunkard, to execute releases of his right and interest in and to that part of the property which falls to the shares of the other joint-tenants or tenants in common. The court may, in its discretion, for the furtherance of the interests of said infant, idiot, lunatic, or habitual drunkard, direct partition to be so made as to set off to him or them his or their share in common with any of the other owners, provided the consent in writing thereto of such owners shall be first obtained.

2 R. S. 330, 331, §§ 87 and 90; L. 1886, ch. 208.

§ 1593. Effect of releases.

Releases so executed have the same validity and effect, as if they were executed by the person in whose behalf they are executed, and as if the infant was of full age, or the idiot, lunatic, or habitual drunkard was of sound mind, and competent to manage his affairs.

Id., §§ 88a and 91, am'd.

§ 1594. When the State is interested.

The people of the State may be made a party defendant to an action for the partition of real property, in the same manner as a private person. In such a case, the summons must be served upon the attorney general, who must appear in behalf of the people.

Id., §§ 92 and 93, am'd.

§ 1595. Exemplified copy of judgment may be recorded.

An exemplified copy of the judgment-roll, or of the final judgment, in an action for partition, may be recorded, in the office for recording deeds, in each county in which any real property affected thereby is situated.

L. 1846, ch. 182, § 2 (4 Edm. 438).

[illegible]. Certain provisions of article second made ap-[illegible]

[illegible] provisions of article second of this title, relating to a sale [illegible] as prescribed in that article, and to the distribution, invest-[illegible], and care of the proceeds, apply, as far as they are appli-[illegible], to a sale made as prescribed in this article, and to the [illegible]ibution of the proceeds of a sale, as prescribed in the last [illegible]on.

§§ 1580-1586, ante.

§ 1635. Pa
stayed.

In a case sp
directing a sa
defendant pa;
interest, and t
of the proceed
ment must b
payment of p
directing the
collecting the

2 R. S. 191, § 162.

§ 1636. Wh

Where the
property is so
out injury to
direct, that n
than is suffici
the action an
default in the
apply for an
much thereof
with the cost
The plaintiff
as a default

Id., part of §§

§ 1637. When the whole p

If, in a case specified in the
the mortgaged property is so
whole will be most beneficial
must direct, that the whole p
of the sale, after deducting
expenses of the sale, be either
whole sum secured by the mor
est, as justice requires; or be
sum due, and the balance, or
be invested at interest, for the
to him from time to time, as a
becomes due.

Id., §§ 165 and 166, am'd.

irmatively that
ras casual and
tted the injury,
s own.
·dict, report, or
hich the action
, for the pur-
oblic bridge, or
ke purpose, by
ys.

or detainer.

al property, in
s held and kept
violence, he is
herefor against

or to return a chattel, or to pay a sum of money, accordi
the terms of the undertaking.

2 R. S. 533, § 65.

§ 1735. Injury, etc., no defence.

It is not a defence to such an action, that the chattel
injured or destroyed, after it was replevied, unless the inju
destruction was effected by the act, or with the consent o
plaintiff in the action, or occurred after the chattel was t
by virtue of the execution.

§ 1736. Abatement and revival of action.

In an action to recover a chattel, the cause of action sur
or continues, notwithstanding the death of either party, in
of or against his executor or administrator. Where the
makes an order, directing the abatement of such an actio
prescribed in section 761 of this act, an action may be m
tained, upon an undertaking, given for the purpose of proc
a delivery or return of a chattel, as if final judgment, awa
to the adverse party possession thereof, had been render
the first action, and an execution thereupon had been retu
unexecuted and unsatisfied: except that damages cannot b
covered therein for a wrongful taking, withholding or dete
An action to recover the chattel cannot be maintained,
an action has been commenced upon an undertaking, as
scribed in this section.

L. 1880, ch. 270; L. 1872, ch. 498. See §§ 755-761, ante.

and the provisions of law, applicable to a warrant of attachn issued out of that court, apply to a warrant, issued as presc in this section, and to the proceedings to procure it, and aft has been issued; except as otherwise specified in the judgment judgment in favor of the plaintiff, in such an action, must c spond to a judgment, rendered as prescribed in the last sec except that it must direct the sale of the chattel by an offic whom an execution issued out of the court, may be directed, the payment of the surplus, if its safe keeping is necessary, t county treasurer, for the benefit of the owner.

See §§ 1-3, L. 1869.

§ 1741. Application of this article.

This article does not affect any existing right or remedy to close or satisfy a lien upon a chattel, without action; and it not apply to a case, where another mode of enforcing a lien up chattel is specially prescribed by law.

Id., § 5.

must be made
e is dead, out
or otherwise;
term held by
granted, the
ide, may dis-
n a like case,
itled to judg-

tion and maintenance of the children of the marriage, and the support of the plaintiff, as justice requires, having re to the circumstances of the respective parties. And the c may, in such an action, render a judgment, compelling defendant to make the provision specified in this section, wh under the circumstances of the case, such a judgment is pro without rendering a judgment of separation.

See 2 R. S. 146, §§ 54 and 55.

§ 1767. Judgment for separation may be revoked.

Upon the joint application of the parties, accompanied satisfactory evidence of their reconciliation, a judgment fo separation, forever, or for a limited period, rendered as prescri in this article, may be revoked, at any time, by the court wh rendered it, subject to such regulations and restrictions as court thinks fit to impose.

Id., § 56.

eparation";
he action is
ut a copy of
copy of the
l to the de-
proving ser-
hat such an
n or printed
l to the de-

require
amoun
by him
of the
2 R. S

§ 179
If it
sums
stock a
the co
which
ers of
must a
such p
payme
Id., §

§ 179
This
law, p
to exi
prescri
ing th
particu

§ 1895. Costs; how awarded.

Where a judgment for a sum of money only is rendered against an executor or administrator, in an action brought against him in his representative capacity, costs shall not be awarded against him, except as prescribed in the next section.

2 R. S. 90, § 41 (3 Edm. 93). See Co. Proc., § 317.

§ 1896. [Am'd, 1895, 1897.] Id.; when awarded, et cetera.

Where it appears in a case specified in the last section that the plaintiff's demand was presented within the time limited by a notice published as prescribed by law, requiring creditors to present their claims and that the payment thereof was unreasonably resisted or neglected, or that the defendant did not file the consent provided in section eighteen hundred and twenty-two at least ten days before the expiration of six months from the rejection thereof the court may award costs against the executor or administrator to be collected either out of his individual property or out of the property of the decedent as the court directs, having reference to the facts which appear upon the trial. Where the action is brought in the supreme court, the facts must be certified by the judge or referee before whom the trial took place.

L. 1895, ch. 895, superseding amendment in ch. 946. See ch. 946, § 4. L. 1897 ch. 449. In effect May 17, 1897.

the real property descended or devised, before resorting to the personal property, or to any other real property descended or devised.

2 R. S. 455, §§ 35 and 38, am'd.

§ 1860. One action, where same person is heir, devisee, etc.

Where a person, who takes real property of a decedent by devise, and also by descent; or who takes personal property as next of kin, and also as legatee; or who takes both real and personal property in either capacity; or who is executor or administrator, and also takes in either of the before mentioned capacities; would be liable in one capacity, for a demand against the decedent, after the exhaustion of the remedy against him in another capacity; the plaintiff, in any action to charge him, which can be maintained, without joining with him any other person, except a person whose liability is in all respects the same, may recover any sum, for which he is liable, although the remedy against him in another capacity was not exhausted. But this section does not increase the sum, which the plaintiff is entitled to recover against him, in the capacity in which he is actually liable; nor does it charge a defendant individually, who is liable only in a representative capacity.

[illegible] within sixty days next before the commencement of the [illegible] where it is made to appear, by his oath or otherwise, that [illegible] earnings are necessary for the use of a family, wholly or [illegible] supported by his labor.

[illegible]70, ch. 151, § 3 subd. 1 (7 Edm. 661); 2 R. S. 173, ch. 1, §§ 38 and 39 [illegible]. 1801. See Co. Proc., § 297.

§ 1888

Where
the peo
prosecut
has sus
injury,
person
bond.
See L.

§ 1889
lated.

Sectio
applicati
and eac
as if th
instead

§ 1890

A rec
other of
within
was ap
special
of this a
must be
he was
the case
must be
leave to bring it.

§ 1891. Demand of money; when necessary before application.

Where the default, by reason of which an application for leave to prosecute an official bond is made, as prescribed in this article, consists of the non-payment of money, and special provision is not otherwise made by law, the applicant must prove a demand of the money from the officer, or that a demand cannot be made, with due diligence. But such proof is not necessary where the applicant has recovered a judgment against the officer.

§ 1892. Application may be made ex parte.

An application for leave to prosecute an official bond, as prescribed in this article, may be made without notice; but in that case the officer, or either of his sureties, may apply, upon notice, to vacate an order permitting the applicant to maintain an action, upon any ground, showing that it ought not to have been granted.

§ 1898. When part of a penalty may be recover

Where a statute gives a pecuniary penalty or forfei exceeding a specified sum, an action may be maintained t the sum specified; and the court, jury, or referee, by by whom the issues of fact are tried, or, where judgmen by default for failure to appear or plead, the damages s tained, may award to the plaintiff the whole sum, or su thereof, as he or it deems proportionate to the offence.

2 R. S. 480, § 15, am'd.

or a counterclaim interposed in the action, is founded, was lost, while it belonged to the party claiming the amount due thereupon, he may prove the contents thereof, by parol or other secondary evidence, and may recover or set off the amount due thereupon, as if it was produced. But for that purpose, he must give to the adverse party a written undertaking, in a sum fixed by the judge or the referee, not less than twice the amount of the note or bill, with at least two sureties, approved by the judge or the referee, to the effect, that he will indemnify the adverse party, his heirs and personal representatives, against any claim by any other person, on account of the note or bill, and against all costs and expenses, by reason of such a claim.

2 R. S. 406, §§ 75 and 76 (2 Edm. 423).

§ 1918. The last section qualified.

But where an action is prosecuted or defended by the people of the State, or by a public officer in their behalf, the people, or the public officer, may prove the contents of a lost note or bill of exchange, by parol or other secondary evidence, and may recover or set off the amount due thereupon, without giving any security to the adverse party.

See L. 1888, ch. 55; 3 R. S., 5th ed., 773 (4 Edm. 645).

court otherwise directs, forthwith bring an action to recover the penalty thereof. It is not necessary, in such an action, to allege or prove any damages, by reason of the breach of the condition; but where the people are entitled to judgment therein, they must have judgment absolute, for the penalty of the recognizance.

2 R. S. 481, § 29, am'd. See § 286, ante, and L. 1878, ch. 379.

§ 1967. Money received by district-attorney; how disposed of.

Within thirty days after a district-attorney receives or collects money upon a recognizance, or for a penalty or forfeiture, belonging to the county, he must pay it to the county treasurer of his county, deducting only his necessary disbursements; except that, where he does not receive, as his compensation, a salary fixed pursuant to law, the county court may, by an order entered in its minutes, allow him to retain also a sum, specified in the order, for his reasonable costs and expenses, and a reasonable counsel fee.

Id., § 32, am'd by L. 1852, ch. 304, §§ 1 and 6 (3 Edm. 330), and L. 1870, ch. 752, § 1 (7 Edm. 777).

§ 1968. District-attorney to render account.

Each district-attorney must render to the first term of the county court of his county, held in each calendar year, a written account, verified by his affidavit, of all actions brought by him upon recognizances, or for penalties or forfeitures belonging to the county, or to the State; of all his proceedings therein; of all judgments recovered by him therein; and of all money, collected by him from any person, belonging to the county or to the State. This section applies to a district-attorney who has gone out of office, during the preceding calendar year.

Id., §§ 34, 35 and 36, am'd and consolidated.

§ 1976. Attorney-general must bring action.

The attorney-general must commence an action, suit, or o judicial proceeding, as prescribed in this article, whenever deems it for the interests of the people of the State so to or whenever he is so directed, in writing, by the governor.

L. 1875, ch. 49, § 4. See § 789, ante.

§ 1981. Attorney-general to report recoveries to commissioners of land office.

The attorney-general must, from time to time, make a report to the commissioners of the land office, of all the real property recovered by the people, in any action brought pursuant to this article.

1 R. S. 282, § 9.

§ 1982. Action to recover personal property forfeited for treason.

Where personal property is forfeited to the people, upon a conviction of outlawry for treason, the attorney-general must bring, and may maintain, an action to recover the same, or the value thereof, or such other action, founded upon the forfeiture, as might be maintained by a private person, who had acquired title to the property.

1 R. S. 284, § 2 (1 Edm. 256).

The fine, when collected, must be paid into the treasury of the State; and the payment thereof bars any action for a penalty incurred by the person so fined, by reason of his refusal or neglect to perform the duty so enjoined.

2 R. S. 587, § 60, am'd.

division in the same department upon such trems* as to security or otherwise, as justice requires.

See L. 1873, ch. 70, § 3; also, § 2087, ante; L. 1895, ch. 946.

§ 2102. [Am'd, 1895.] Stay of proceedings; enlargement of time.

The proceedings upon a writ of prohibition, granted at a specia term, may be stayed, and the time for making a return, or for doing any other act thereupon, as prescribed in this article, may be enlarged, as in an action, by an order made by the judge of the court, but not by any other officer. Where the writ was granted at a term of the appellate division, an order staying the proceedings, or enlarging the time to make a return, can be made only by a justice of the appellate division of the judicial department within which the writ is returnable; and where notice has been given of an application for a prohibition at a term of the appellate division, or an order has been made to show cause at such term, why a prohibition should not issue, a stay of proceedings shall not be granted, before the hearing, by any court or judge.

See § 2089, ante, and act of 1873; L. 1895 ch. 946.

* So in the original.

6. Where he pays, or consents to the payment of, any portion of the debt or demand of a creditor, or grants or consents to the granting of any gift or reward to a creditor, upon an express or implied contract, trust, or understanding, that the creditor so paid or rewarded should be a consenting creditor, or should abstain or desist from opposing the discharge.

7. Where he is guilty of any fraud whatsoever, contrary to the true intent of this article.

Art. 3, § 35, R. S., am'd.

§ 2187. Invalidity may be proved on motion to vacate order of arrest, etc.

Where a person, who has been discharged as prescribed in this article, is afterwards arrested by virtue of an order of arrest made, or an execution issued, in an action founded upon a debt or liability from which he is so discharged, the adverse party may oppose his application to be released from the arrest by proof, by affidavit, of any cause for avoiding the discharge, for want of jurisdiction, or as specified in the last section. If such a cause is established, the application must be denied.

Art. 7, §§ 21 and 22, R. S. See § 586, ante.

§ 2218. Debtor to United States, etc., not to be discharged.

Neither of the following named persons shall be discharged from imprisonment, under the provisions of this article:

1. A person owing a debt or duty to the United States.

2. A person owing a debt or duty to the State, for taxes or for money received or collected by any person, as a public officer or in a fiduciary capacity, or a cause of action specified in section 1969 of this act or a judgment recovered upon such a cause of action.

Parts of §§ 29 and 30, art. 7, R. S. See § 2184, ante.

ing or execution of the warrant thereupon, cannot be stayed or suspended by any court or judge, except in one of the following methods:

1. By an order made, or an undertaking filed, upon an appeal, in a case and in the manner specially prescribed for that purpose in this title.

2. By an injunction order, granted in an action against the petitioner. Such an injunction shall not be granted before the final order in the special proceeding, except in a case where an injunction would be granted to stay the proceedings, in an action of ejectment, brought by the petitioner, and upon the like terms; or after the final order, except in a case where an injunction would be granted to stay the execution of the final judgment in such an action, and upon the like terms.

R. S., § 47.

§ 1506.

the property, during the occupation, while the person, upon wl life the prior estate depends, is or was living.

2 R. S. 343, § 20.

§ 2319. Order not conclusive in ejectment.

A final order, made as prescribed in this title, awarding to petitioner the possession of real property is presumptive evid only, in an action of ejectment, brought against him by person evicted, or in an action brought as prescribed in the section, of the life or death of the person, upon whose life prior estate depends.

§ 2364. Debts of infant, etc., to be paid equally.

In the application of money, arising from a sale, mortgage or lease, made for the purpose of paying debts, as prescribed in this title, the special guardian of the infant, or the committee of the property of the incompetent person, must pay all debts, in equal proportion, without giving a preference to a debt founded upon a specialty, or upon which judgment has been taken.

2 R. S. 54, § 15 (2 Edm. 55); L. 1874, ch. 446, § 21 (9 Edm. 933).

whether he is a sole party to the controversy, or one of two or more parties on the same side.

2 R. S. 541, part of § 23.

§ 2384. Liability of party who revokes.

Where a party expressly revokes a submission, made either as prescribed in this title or otherwise, any other party to the submission may maintain an action against him, and also against his sureties, if any, upon the submission, or any instrument collateral thereto, in which action the plaintiff may recover all the costs and other expenses, and all the damages, which he has incurred in preparing for the arbitration, and in conducting the proceedings to the time of the revocation. Either of the arbitrators may recover, in an action against the revoking party, his reasonable fees and expenses.

Id., part of §§ 23 and 24.

§ 2385. Limitation of recovery against him.

A sum, penalty, forfeiture, or damages, shall not be recovered for a revocation of a submission to arbitration, made either as prescribed in this title or otherwise, except as prescribed in the last section; notwithstanding any stipulated damages, penalty, or forfeiture, expressed in the submission, or in any instrument collateral thereto.

Id., § 25.

§ 2386. Application of this title.

This title does not affect any right of action in affirmance, disaffirmance, or for the modification of a submission, made either as prescribed in this title or otherwise, or upon an instrument collateral thereto, or upon an award made or purporting to be made in pursuance thereof. And, except as otherwise expressly prescribed therein, this title does not affect a submission, made otherwise than as prescribed therein, or any proceedings taken pursuant to such a submission, or any instrument collateral thereto.

Part of § 22, am'd.

names any uncertified wills, and by signing and certifying in their own names, the unsigned and uncertified records of wills and of other proofs and examinations taken in the proceedings of probate thereof, before their predecessors in office, are hereby confirmed and declared to be valid and in full compliance with the pre-existing statutory requirements.

L. 1893, ch. 686.

fourth of title sixth, of chapter eighth, and articles first and second of title third, of chapter ninth, apply to surrogates' courts and to the proceedings therein, so far as they can be applied to the substance and subject-matter of a proceeding, without regard to its form.

L. 1837, ch. 460, § 77 (4 Edm. 501); 2 R. S. 221, § 6 (2 Edm. 280).

own use, ten cents for each mile for going, and the same sum for returning.

2. He must charge, and receive to the use of the county, for a copy of a paper, ten cents for each folio, except where the board of supervisors have allowed his clerk to receive fees for his own use; and in that case, his clerk may charge and receive the same fee.

L. 1869, ch. 246, § 1 (2 Edm. 433); L. 1870, ch. 359; L. 1844, ch. 290, § 3 (4 Edm. 694); L. 1837, ch. 460, § 69.

an action must be paid, by the sheriff or other officer who collects it, into the surrogate's court; and the surrogate must distribute it to the creditors or other persons entitled thereto. The proceedings for such a distribution are the same as prescribed in title fifth of this chapter, for the distribution of the proceeds of a sale of real property.

§ 2610. Application of this article to executors, etc., heretofore appointed.

The provisions of this article apply to an executor, administrator, or guardian, to whom letters have been issued, and to a testamentary trustee whose trust has been created, before this chapter takes effect; except that it does not affect, in any manner, the liability of the sureties in a bond, executed before this chapter takes effect.

therein, is not
made since th
to a will exec
hundred and
cuted before
the enactment
and eighteen
except where
those sections
scribed in this
As amended
amendment.
L. 1893, ch. 6

**§ 2612. [Am
executors.**

No person
time the will is
1. Incapable
2. Under the
3. An alien
4. Who shall
5. Who, on
to execute the
honesty, impr
person be nam
named therein
tration with th
of the executo
refuse to grant
son unable to r
L. 1893, ch. 6

**§ 2613. [Am
not named i
letters of ad**

If the disability of a person under age, or an alien n
executor in a will, be removed before the execution of th
sions of such will is completed, he shall be entitled, on
tion, to supplementary letters testamentary, to be issued
same manner as the original letters, and authorized to jo
execution of the will with the persons previously appoi
person named in a will as executor, and not named as suc
letters testamentary or in letters of administration with
annexed, shall be deemed to be superseded thereby, a
have no power or authority whatever as such executor
appears and qualifies. An executor named in a will has n
to dispose of any part of the estate of the testator befor
testamentary are granted, except to pay funeral charges
interfere with such estate in any manner further than
sary for its preservation. Where letters of administrati
the will annexed are granted, the will of the deceased
observed and performed; and the administrators, with su
have the rights and powers and are subject to the sam
as if they had been named executors in the will.
L. 1893, ch. 6

to the hands of the executor or administrator, by virtue of any provision contained in the will.

2 R. S. 76, § 42. See post, §§ 2667, 2815, 2816.

§ 2646. Effect of certain provisions limited.

This article does not vary the effect of a decree for probate, made before this chapter takes effect, as declared in the statutes then in force.

appointed, except as otherwise prescribed in section 2673 and section 2674 of this act.

§ 2683. Application of this chapter to collectors, etc., heretofore appointed.

Each provision of this chapter, imposing a duty or liability upon a temporary administrator, appointed upon the estate of a decedent, or his sureties; or conferring upon the surrogate power or authority with respect to such a temporary administrator, or his sureties; applies to a collector or special administrator, appointed before this chapter takes effect, and his sureties; except so far as it is repugnant to the provisions of law in force, when the collector or special administrator was appointed, or to the letters issued to him.

§ 2692. Remaining executors may act, where letters of one revoked.

Where one of two or more executors or administrators dies, or becomes a lunatic, or is convicted of an infamous offence, or becomes otherwise incapable of discharging the trust reposed in him; or where letters are revoked with respect to one of them, a successor to the person, whose letters are revoked, shall not be appointed, except where such an appointment is necessary, in order to comply with the express terms of a will; but the others may proceed and complete the administration of the estate, pursuant to the letters, and may continue any action or special proceeding, brought by or against all.

2 R. S. 78, § 44 (2 Edm. 79); L. 1837, ch. 460, § 33 (4 Edm. 493).

§ 2693. In other cases, successor to be appointed.

When all the executors or all the administrators, to whom letters have been issued, die, or become incapable, as prescribed in the last section, or the letters are revoked as to all of them; the surrogate must grant letters of administration to one or more persons as their successors, in like manner as if the former letters had not been issued; and the proceedings to procure the grant of such letters, are the same, and the same security shall be required, as in a case of intestacy, except that the surrogate may, in his discretion, in case where the estate has been partially administered upon by the former representative or representatives, fix as the penalty of the bond to be given by such successor or successors, a sum not less than twice the value of the assets of the estate remaining unadministered.

Id., § 45.

§ 2728. [Am'd, 1893.] Executors, etc., may petition for judicial settlement; citation thereupon.

In either of the following cases an executor or administ
may present to the surrogate's court his account and a [illegible]
petition, duly verified, praying that his account may be [illegible]
settled, and that the sureties [illegible]
representatives of such sureties [illegible] persons
[illegible]
[illegible]
[illegible]
[illegible]
[illegible] may be cited to attend the settlement:

1. Where one year has elapsed since letters were iss
such executor or administrator.

2. Where there are sufficient [illegible]
decedent to satisfy the same [illegible]
executor or administrator has [illegible]
law. If one of [illegible]
sents his account and a petition [illegible]
separate account [illegible]
administrators may also be [illegible]
count and a petition as prescribed [illegible]
must issue a citation [illegible]
issued as prescribed in this [illegible]
account, and hear the allegations and proofs of the part
opposing the same. Any party may [illegible]
respect to a matter affecting his interest [illegible]
distribution of the estate. And any party may [illegible]
mediate account rendered under section [illegible]
and twenty-five of this act in case the estate [illegible]
solidated pursuant to section twenty-seven hundred and
seven of this act. A creditor, or a person interested in the
although not cited, is entitled to appear on the hearing, an
make himself a party to the proceedings. When letters iss
an executor or administrator have been revoked, he ma
sent to the surrogate's court a written petition, duly v
praying that his account be judicially settled, and that h
cessor, if a successor has been appointed, and the other p
specified in this section be cited to attend the settlement.

L. 1893, ch. 425.

§ 2729. [Am'd, 1893.] Affidavit to account: vouc examination of accounting party.

To each account, filed with the surrogate, as prescribed i
article, must be appended the affidavit of the accounting
to the effect that the account contains, according to the b
his knowledge and belief, a full and true statement of a
receipts and disbursements on account of the estate of th
cedent, and of all money and other property belonging t
estate, which have come to his hands, or which have be
ceived by any other person, by his order or authority, f
use; and that he does not know of any error or omiss
the account, to the prejudice of any creditor of, or pers
terested in, the estate of the decedent. On an accounting
executor or administrator, the accounting party must pr
and file a voucher for every payment, except in one of th
lowing cases:

real estate of such deceased person, and such action shall have been decided in favor of such executor, administrator or creditor, such executor, administrator or creditor may, at any time within three years after the final determination of such action, have and maintain an action or proceeding against the proper parties, in any court of competent jurisdiction of this State, for a sale of such real estate, and for a distribution of the proceeds of such real estate among the creditors of such deceased person, and other persons entitled to the same as may be directed by the judgment in such action.

L. 1887, ch. 423.

§ 2752. [Am'd, 1894.] Contents of petition.

The petition must set forth the following matters, as nearly as the petitioner can, upon diligent inquiry, ascertain them:

1. The unpaid debts of the decedent, and the name of each creditor or person claiming to be a creditor; and the name of each person holding, or claiming to hold, a lien by judgment docketed against decedent before his decease, and also the several dates of docket of all or any of such judgment liens, and whether such judgment lien or liens affect the whole or part of the decedent's real property; and the amount of the unpaid funeral expenses of the decedent, if any, and the name of any person to whom any sum is due by reason thereof.

2. A general description of all the decedent's real property, and interest in real property, within the State, which may be disposed of as prescribed in this title; a statement of the value of each distinct parcel; whether it is improved or not; whether it is occupied or not; and, if occupied, the name of each occupant; whether it is incumbered by a mortgage lien or liens together with a statement of the amount due or claimed to be due thereon. Where the petition describes an interest in real property, specified in section two thousand seven hundred and forty-nine of this act, the value of the interest must be stated, and also the value of, and the other particulars, specified in this section, relating to the real property to which the interest attaches.

3. The names of the husband or wife, and of all the heirs and devisees of the decedent, and also of every other person claiming under them, or either of them, stating who, if any, are infants; the age of each infant, and the name of his general guardian, if any; and also, if the petition is presented by a creditor or judgment lienor, the name of each executor or administrator.

4. If the petition is presented by an executor or administrator, the amount of personal property which has come to his hands, and those of his co-executors or co-administrators, if any; the application thereof, and the amount which may yet be realized therefrom.

L. 1894, ch. 735.

§ 2753. [Am'd, 1894.] Proceedings where some of the facts are unknown.

If, upon diligent inquiry, any of the matters required to be set forth, as prescribed in the last section, cannot be ascertained by the petitioner, that fact must be shown to the surrogate's satisfaction, and the surrogate must, thereupon, inquire into the matter, as prescribed in article first of title second of this chapter. If the petition is presented by a creditor or judgment-lienor, the surrogate may, by order, require the executor or ad-

manner as a deed to be recorded in the county, w
sents to accept, in lieu of her dower, a sum, to be
the surrogate, equal to the value of her right o
gross proceeds, according to the principles applic
nuities; and, if she present such an instrument, b
such a sum. If it shall appear to the surroga
cedent's widow is an infant, lunatic or otherwise in
that a general guardian or committee has been
proof that it will be for the best interest and ad
estate of such infant, lunatic or incompetent widow
must authorize and direct such guardian or commit
of such infant, lunatic or incompetent widow, hav
right, to execute an instrument under seal, ac
proved and certified in like manner as a deed to be
county, whereby such guardian or committee shal
cept in lieu of dower a sum to be ascertained by t
above provided, according to the principles applic
nuities; and upon presentation of such an instrum
rogate, the value of the right of dower so ascertain
be paid to such guardian or committee. Such in
have the same force and effect as a deed or instru
and acknowledged by a competent person.

4. Out of the remainder of the money, arising up
lease or sale, must be paid the costs of the spec
awarded to the petitioner in the decree.

5. Out of the remainder of the money must be
to such extent as the money applicable thereto wil
and according to their respective priorities, all jud
tablished and ordered paid by the decree, upon eit
second hearing, and which were not disallowed or
either of such decrees. But no part of such money
the disposition of any real property of decedent,
thereof, shall be applied toward the payment of any
established by the decree, except where such proce

as prescribed in this title, and assets, which should have been applied thereto, are afterwards discovered; or, for any other reason, money or other personal property of the decedent, which should have been applied thereto, afterwards comes to the hands of the executor, administrator, legatee or next of kin, the heir, devisee or other person aggrieved may maintain an action to procure reimbursement therefrom.

L. 1894, ch. 735.

longing to the ward, in a case where letters have been issued to a guardian of the infant's property, from a surrogate's court of a county within the State, upon an allegation that the infant was a resident of that county, except by the special direction, made upon good cause shown, of the surrogate's court from which the principal letters were issued, or unless the principal letters have been duly revoked.

Id. remainder of § 1.

§ [illegible]. Application of the last section to former guardians.

The last section applies to letters granted, before this chapter takes effect, by a surrogate's court of the State, to a guardian appointed by a court of another State, or a territory of the United States, upon presentation of an exemplified transcript of the record of his appointment.

[illegible]

[illegible] does not know of any error or omission [illegible] to the prejudice of the ward. The [illegible] copy of this and the last section, to all [illegible] the property of an infant issued from [illegible]

[illegible] See § 263, post.

[illegible] 262. Annual examination of guardian's [illegible]

[illegible] year, and thereafter until [illegible] the purposes specified in the [illegible] examined, under his direction [illegible] guardians filed since the [illegible] preceding year. The examination [illegible] surrogate's court, or by a person [illegible] make it, who must, before [illegible] and take, before the [illegible] the surrogate's court, an [illegible] make a true report [illegible] certifies in [illegible] the county of New-[illegible] examination required [illegible] by the clerk of the [illegible] in his office and [illegible] for the compensation [illegible]

[illegible] account defective, etc.

[illegible] examination made as [illegible] guardian of an in-[illegible] from his court, has [illegible] account, or the affidavit [illegible] but one; or if [illegible] interest of the ward [illegible] more full or satis-[illegible] must make an order, [illegible] and also, in his [illegible] pay the expense [illegible] guardian fails to [illegible] after it is made. [illegible] sufficient cause [illegible] may, in his dis-[illegible] guardian of the [illegible] behalf, for the [illegible] necessary proceed-[illegible]

§ 264. Surrogate may direct as to infant's maintenance.

[illegible] an infant's person [illegible] other person [illegible] such persons, if any, [illegible] an order, directing the [illegible] property, to the support [illegible] a sum as to the surrogate [illegible] the infant's property; or, where [illegible] that purpose, out of the principal.

§ 2891. Plaintiff to prove his case.

If a defendant fails to appear and answer, the plaintiff cannot recover without proving his case.

Co. Proc., § 64, subd. 8.

§ 2892. Defendant may offer to compromise; proceedings thereupon.

Except in an action to recover a chattel, the defendant may, upon the return of the summons and before answering, file with the justice a written offer to allow judgment to be taken against him for a sum therein specified, with costs. If there are two or more defendants, and the action can be severed, a like offer may be made by one or more of the defendants against whom a separate judgment may be taken. If the plaintiff thereupon, before taking any other proceeding in the action, files with the justice a written acceptance of the offer, the justice must render judgment accordingly. If an acceptance is not filed, the offer cannot be given in evidence upon the trial; but, if the plaintiff fails to obtain a more favorable judgment, he cannot recover costs from the time of the offer, and must pay the defendant's costs from that time.

Id., part of subd. 15.

§ 2893. Justice to wait one hour.

Upon the return of a summons duly served, the justice must wait one hour, after the time specified therein for its return, unless the parties sooner appear.

2 R. S. 233, § 46 (2 Edm. 249), am'd.

ARTICLE THIRD.

Order of arrest.

Sec. 2894. Order of arrest: in what cases it may be granted.
2895. Id.: in what actions.
2896. Id.: upon what papers.
2897. Id.: undertaking.
2898. Id.: in possession.
2899. Id.: [illegible] When plaintiff notified must appear.
2900. Discretionary to keep defendant in custody.
2901. Bond to discharge from arrest.
2902. Effect of discharging defendant.
2903. When plaintiff must prove extrinsic facts.
2904. Privilege from arrest.

§ 2894. Order of arrest: in what cases it may be gran

At the time when the summons is issued, in an action spec in the next section, the justice who issues the summons must, the application of the plaintiff, and upon compliance by him the provisions of this article, grant an order for the arres the defendant, in either of the following cases:

1. Where the defendant to be arrested is not a residen the county.

2. Where the plaintiff is not a resident of the county; o there are two or more plaintiffs, where all are non-resid thereof.

3. Where it appears to the satisfaction of the justice by affidavit of the plaintiff or another person, that the defenda about to depart from the county, with intent not to re thereof.

But such an order cannot be granted, where the defend against whom it is applied for, is a female.

2 R. S. 253, § 157 (2 Edm. 270). 2 R. S. 253, § 158 (2 Edm. 270).

§ 2895. Id.: in what actions.

An order of arrest shall not be granted, except where the tion is brought for one or more of the following causes:

1. To recover a fine or penalty.

2. To recover damages for a personal injury, of which a tice of the peace has jurisdiction; an injury to property, inclu the wrongful taking, detention, or conversion of personal prop misconduct or neglect in office, or in a professional employm fraud; or deceit. But this subdivision does not apply to a c for damages in an action to recover a chattel.

3. To recover for money received, or to recover a cha where it appears that the money was received, or that the c tel was embezzled or fraudulently misapplied, by a public off or by an attorney, solicitor, or counsellor, or by an office agent of a corporation or banking association, in the course o employment; or by a factor, agent, broker, or other person fiduciary capacity.

Substituted for L. 1831, part of §§ 30 and 31 (4 Edm. 472).

§ 2896. Id.: upon what papers.

Where it appears to the justice, by the affidavit of the plai or another person, that a sufficient cause of action exists, ag the defendant, and that the case is within the provisions of last two sections, he must grant the order of arrest. But be granting it, he must require a written undertaking to the def

was granted, and upon the complaint, if it has been made. The justice must grant the application, where it appears that the case is not within the provisions of sections 2894 and 2895 of this act. The justice must also, upon the defendant's application, grant an order discharging him from arrest, if the plaintiff fails to take out, from the justice, an execution upon a judgment in his favor, before the expiration of one hour after he is entitled thereto.

§ 2902. Effect of discharging defendant.

The discharge of the defendant from arrest, before judgment as prescribed in the last section, or in section 2963 of this act, does not affect the jurisdiction of the justice over the action, which must proceed, as if it had been commenced in the ordinary manner. His discharge from arrest, after judgment, as prescribed in the last section, does not affect the execution.

§ 2903. When plaintiff must prove extrinsic facts.

Where an order of arrest has been granted and executed, in a case specified in subdivision third of section 2895 of this act, the plaintiff cannot recover upon a default, and the defendant is entitled to judgment upon a trial, unless the plaintiff establishes all the matters of fact, which are required, by that subdivision to entitle him to an order of arrest.

§ 2904. Privilege from arrest.

This article does not abridge or otherwise affect a privilege from arrest given by law, or a right of action for the breach thereof. A privileged person is entitled to be discharged from arrest, by the order of the justice before whom he is brought, upon proof, by affidavit, of the facts entitling him to a discharge; or he may apply for and obtain an order for his discharge, as prescribed in section 564 of this act.

§ 2915. Return of warrant.

The constable executing the warrant of attachment must, at the time when and place where it is returnable, make a return thereto, under his hand, stating all his proceedings thereupon. He must deliver to the justice, with the return, each bond or undertaking delivered to him, pursuant to any of the foregoing provisions of this article, and a certified copy of the inventory of the property attached. The return must state the manner in which the warrant and inventory were served, and, if they were served otherwise than by delivering a copy thereof to the defendant personally, the reason thereof, and the name of the person to whom the copy was delivered, unless his name is unknown to the constable; in which case, the return must describe him so as to identify him, as nearly as may be.

2 R. S. 290, § 35, as amd. L. 1881, ch. 100, § 1; Code Civ. Pro. 473.

§ 2916. Motion to vacate or modify warrant, etc.

A defendant whose property has been attached, may, upon the return of the summons, apply to the justice who issued the warrant of attachment, to vacate or modify it, or to increase the plaintiff's security. Such an application may be founded upon the papers upon which the warrant was granted, or upon proof, by affidavit, or the examination of witnesses, or upon both. If it is founded upon proof, in the nature of an examination, it may be opposed by new proof, by affidavit, by examination of the plaintiff, tending to sustain, vary or qualify the allegations, recited in the warrant, but no other. The justice may, upon the return of the summons, or at any other time to which the action is adjourned, vacate the warrant of attachment upon his own motion, if he deems the papers, upon which it was granted, insufficient to authorize it.

§ 2917. Effect of vacating warrant.

Vacating the warrant of attachment does not affect the jurisdiction of the justice over the action, except in cases where the defendant has appeared generally in the action, or where the summons was personally served within the county, or where judgment may be taken against him, as a joint debtor, jointly with another defendant, who has been thus served, or has thus appeared. In every other case, the justice, who vacates a warrant of attachment against the property of a defendant, must dismiss the action as to him.

§ 2918. Proceedings where summons not personally served.

Where the defendant has not appeared, and the summons has not been personally served upon him, if property of the defendant has been duly attached, by virtue of a warrant, which has not been vacated, the justice must proceed to hear and determine the action, in the same manner as if the summons had been served. If, upon the trial, the judgment is only in favor of the plaintiff, and the defendant is not liable to an execution, for the recovery of the plaintiff. The execution, issued upon such a judgment, must require the officer to satisfy the judgment, so far as the property so attached, without containing a direction to satisfy it out of any other property.

L. 1881, ch. 100, § 32; Code Civ. Pro. 474.

Where the summons [illegible] fendant, or where he appears, the justice [illegible] and determine the action, although the plaintiff [illegible] the chattel to be replevied, or the constable [illegible] to replevy it.

[illegible]

§ 2956. When title comes in question on plaintiff's own showing.

If, however, it appears, upon the trial, from the plaintiff's own showing, that the title to real property is in question, and the title is disputed by the defendant, the justice must dismiss the complaint, with costs, and render judgment against the plaintiff accordingly.

Co. Proc., § 59.

§ 2957. Pleadings in new action. Undertaking before justice, when applicable.

In the new action, to be brought after an action before a justice is discontinued, by the delivery of an answer and an undertaking, as prescribed in the last six sections of this act, the plaintiff must complain for the same cause of action only, upon which he relied before the justice; and the defendant's answer must set up the same defence only, which he made before the justice. If the action is to recover a chattel, which was replevied in the justice's court, each undertaking, given in the justice's court, continues to be valid in, and is applicable to, the new action.

Id., § 60.

§ 2958. Answer of title as to one of several causes of action.

Where, in an action before a justice, the plaintiff has two or more causes of action, and the defence, that the title to real property will come in question, is interposed as to one or more, but not as to all of them; the defendant may deliver an answer and undertaking as prescribed in sections 2951 and 2952 of this act, with respect to the cause or causes of action only, in which title will so come in question. Whereupon the justice must discontinue the action as to those causes of action only; the plaintiff may commence a new action therefor in the proper court; and the original action must proceed as to the other causes.

Id., part of § 62.

and returned; not exceeding the length of time for which the trial might be adjourned upon the application of the defendant.

L. 1831, ch. 138, § 1 (4 Edm. 548).

§ 2984. Execution and return of commission.

The commission must be executed and returned, as prescribed in section 901 of this act; and a copy of that section must be annexed thereto, except that subdivision sixth thereof may be omitted.

Substituted for L. 1838, ch. 243, § 4 (4 Edm. 641).

§ 2985. Receipt thereof by justice.

The justice, to whom the package containing the commission is transmitted by mail, must receive it from the post-office, and open and file it, indorsing thereupon the date of his so doing. It must remain on file with him, until the trial; but either party is entitled to inspect it on file.

§ 2986. When deposition evidence.

Sections 902 and 903 of this act apply to a commission, issued as prescribed in this article; and to the execution thereof. A deposition taken thereunder may be read in evidence upon the trial by either party, and has the effect specified in section 911 of this act.

§ 2987. Powers of commissioners.

Where the commission is executed within the State, the commissioner, or, if there are two or more, a majority of them, have the same power to issue a subpoena, to swear a witness, and to compel his attendance, that a justice of the peace has, in an action pending before him.

L. 1841, ch. 138, § 2 (4 Edm. 546).

and applied to the same use, as is pres
title fourth of this chapter, with respe
as a witness, and not attending, or
testify.

Id., § 112, am'd; L. 1873, ch. 146 (9 Edm.

judgment was docketed by the first county clerk. The judg when docketed as prescribed in this section, has the like with respect to the enforcement thereof, or any proceedings under, or by virtue thereof, in the county where it was so eted, as if it was rendered by a justice of the peace of county, and docketed upon filing his transcript; except where an application for leave to issue an execution is nece it must be made to the county court of the county wher judgment was rendered.

Co. Proc., § 63, and R. S., part of § 284.

§ 3023. Justice may give transcript, after expiratio his term.

A justice of the peace, whose term of office has expired, make a transcript of a judgment rendered by him, as pres in either of the foregoing sections of this title.

§ 3043. Execution upon judgment docketed with county clerk.

Where a judgment, rendered by a justice of the peace, has en docketed with a county clerk, upon the filing either of a anscript from the justice's docket, or of a transcript from the erk's docket of another county, the execution, to be issued ereupon by the county clerk, must be in the same form, and ecuted in the same manner, as an execution issued upon a dgment of the county court; except as otherwise prescribed in ction 1367 of this act; and except, also, that, where the judgent is for a sum less than twenty-five dollars, exclusive of sts, the direction to satisfy the judgment out of the real property of the judgment debtor must be omitted. In that case the ovisions of this act, relating to the satisfaction of an execution t of the judgment debtor's real property, are not applicable ereto.

lo. Proc., § 64, subd. 13. See §§ 3017 and 1367, ante.

default; the appellate court may, in its discretion, set aside judgment appealed from, in any proceedings thereunder, and order direct a new trial before the same justice, or before another justice of the same county designated in the order, at such time and place specified in the order and upon such terms, it deems proper.

Co. Proc., part of § 3[illegible].

§ 3006. [Am'd. 1892.] Id.: proceedings before justice.

Where a new trial is directed before a justice, as prescribed the last two sections, the parties must appear before him, at time and place specified in the order of the appellate court, w out service of any notice, or of a copy of the order. Thereu the like proceedings must be had in the action, as upon return of a summons personally served.

L. 1893, ch. 2[illegible].

§ 3006. Costs; when awarded.

Upon an appeal provided for in this article, the award of c is regulated as follows:

1. If the appeal is dismissed, because neither party bring to a hearing, as prescribed in this article, costs shall not awarded to either party.

2. If the judgment is reversed for an error in fact, not aff ing the merits; or if a new trial is directed before the same another justice, as prescribed in this article; the costs of appeal are in the discretion of the appellate court.

3. If the judgment is affirmed, costs must be awarded to respondent.

4. If the judgment is reversed, costs must be awarded to appellant.

5. If the judgment is affirmed only in part, the costs, or a n part thereof, as to the appellate court seems just, not exceed ten dollars, besides disbursements, may be awarded to eit party.

Co. Proc., part of §§ 368 and 371.

§ 3007. Amount of costs.

Upon an appeal, provided for in this article, costs, wl awarded, must be as follows, besides disbursements:

To the appellant, upon reversal, thirty dollars.

To the respondent, upon affirmance, twenty-five dollars.

Id., part of § 71, am'd.

3132. Costs upon adjournment.

Where an application is made for a second or subsequent ad-
rnment of the trial of an action, brought in a justice's court
the city of Brooklyn, after it has been once adjourned, the jus-
e may, in his discretion, require payment to the adverse party
a sum, not exceeding five dollars, besides disbursements, as a
ndition of granting the application.

L. 1871, ch. 492, part of § 3.

**§ 3133. Application of other provisions. Holding court
pen.**

Each justice of the peace of the city of Brooklyn is a justice
the peace of Kings county; and each provision of this act, re-
ting to the proceedings before a justice of the peace of a town,
plies to the proceedings before a justice of the peace of that
y, except as otherwise specially prescribed in this title. Each
those justices must hold his court open, from nine o'clock in
e morning, until three o'clock in the afternoon.

ee L. 1849, ch. 125, §§ 35 and 36; L. 1850, ch. 102, § 18; L. 1871, ch. 492,
; L. 1873, ch. 863, part of § 16.

TITLE XII.

Miscellaneous provisions.

§ 3134. Mode of application of certain provisions of this act.
3135. General requisites of mandates.
3136. Reward to constable forbidden.
3137. Justice or constable not to pay claim, etc.
3138. Penalty.
3139. Violation of preceding sections a defence of action.
3140, 3141. Docket-book to be kept by justice; entries therein.
3142. Index to docket-book.
3143. Papers to be filed.
3144. Deposit of books and papers with town or city clerk.
3145. Certificate in docket-book deposited.
3146. Town or city clerk to demand books, etc., upon death, etc., of justice.
3147. Delivery, how compelled.
3148. Minutes to be evidence.
3149. Justice to furnish copies of papers.
3150. Manner of action when justice's term expires, etc.
3151. Id. when justice is a witness.
3152. Proceedings upon transfer.
3153. Penalty for not paying over money.
3154. Action on judgment of justice.
3155. Id. [illegible] of judgment, etc.
3156. Action on a mandate by private person.
3157. Constable to execute mandates in person.
3158. Sheriff to act where execution of mandate is resisted.

§ 3134. Mode of application of certain provisions of this act.

Where a provision of this act, not contained in this chapter, is made applicable to proceedings before a justice of the peace, the application is subject to the qualification, that it does not include any thing, which is repugnant to any special provision of law, regulating the jurisdiction or powers of a justice of the peace, or the proceedings before him. Where a provision, thus made applicable, relates to the filing of a paper in a court, or with a clerk, the paper must, in an action or special proceeding before a justice of the peace, be filed with the justice, unless he has a clerk appointed pursuant to law; and where it confers a power upon a court or a judge, the provision, making it applicable to proceedings taken under this chapter, is to be construed, as conferring a like power upon the justice, before whom the action or special proceeding is brought.

§ 3135. General requisites of mandates.

A mandate, issued by a justice of the peace, must be signed by him, and may be without seal. It must be entirely filled up at the time when it is delivered to an officer to be executed, so as to have no blank, either in the date thereof or otherwise; except that there may be a blank in a subpoena for the name of any or all of the witnesses. A mandate, issued and delivered to an officer to be executed, contrary to this section, is void.

[1] R. S. 267, §§ 232 and 233 (2 Edm. 275).

§ 3136. Reward to constable forbidden.

A constable shall not ask or receive any money or other valuable thing from any person, as a consideration, reward, or inducement for omitting or delaying to arrest a person, or to carry him to jail, or to sell property, by virtue of an execution,

ment debtor was released, had been returned without his taken.

See L. 1875, ch. 479, part of § 10.

§ 3164. Money; how paid into the court.

Money paid into the court, pursuant to any provision of act, must, unless the court otherwise directs, be paid direc the chamberlain of the city of New-York, to the credit cause in which it is paid.

If the defendant has given bail, the undertaking of the bail must be returned, to be delivered to the plaintiff when the court so directs.

§ 3185. Id.; proceedings after return.

Unless both parties sooner appear, the court must wait one hour after the return; or, if the defendant has given bail, one hour after the opening of the court. As soon after the parties appear, or after the expiration of the hour, as the business upon which the court is then engaged will permit, the court must take up the cause. If the plaintiff does not then appear, a judgment dismissing the complaint, with costs, must be rendered. If the defendant does not then attend in person, the plaintiff must then make his complaint, and the defendant's default must be entered. If the plaintiff appears and the defendant attends in person, the pleadings must then be made, and issue must be joined. The pleadings may be oral or written; if they are oral, the clerk must enter the substance thereof in the minutes. If either party desires a trial by a jury, he must demand the same, at the time of the joinder of issue; otherwise the issue must be tried by the court, without a jury.

§ 3186. Id.; trial.

Where a trial by jury is duly demanded, the court at chambers must direct the issue to be tried, at a trial term, upon such notice as it deems proper, or without notice; it may also direct that the action have a preference upon the day calendar, either generally or for a particular day; and it may give such direction as it deems proper, with respect to filing a note of issue. Where a trial by jury is not duly demanded, or where the defendant is in default, the evidence must then, or at such subsequent time, either at chambers or at a trial term or special term, as the court at chambers appoints, be given; and thereupon final judgment must be rendered. But the issue must be appointed to be tried, within six days after the joinder thereof, unless both parties assent to a longer time; or a trial by jury is demanded, and there is no term of the court, at which it can be had, within that time. The trial cannot be adjourned, without the consent of both parties, beyond three calendar months from the joinder of issue.

§ 3187. Ordinary action may be brought for like cause.

This article does not prevent the plaintiff from commencing, and conducting in the ordinary manner an action, for a cause specified in subdivision second of section 317 of this act.

ment from which an appeal might be taken. Such appeals shall be heard in such manner and by such justice or justices as the appellate division of the supreme court in the first department shall direct.

Co. Proc., § 853; L. 1874, ch. 545, § 9; L. 1895, ch. 946.

§ 3192. Id.; proceedings regulated.

Titles first and third of chapter twelfth of this act apply to and govern an appeal, taken as prescribed in the last section, except as otherwise expressly prescribed in the next two sections.

See L. 1874, ch. 545, § 9.

§ 3193. [Am'd, 1895.] Id.; within what time; where heard.

An appeal, authorized by the last section, must be taken within twenty days after service of a copy of the judgment or order appealed from* a written notice of the entry thereof.

L. 1895, ch. 946.

§ 3194. Id.; determination upon appeal, how enforced. Id.; where new trial was properly granted.

The judgment or order of the appellate court must be remitted to the court below, to be enforced according to law. Upon an appeal from an order granting a new trial, on a case or exceptions, if the appellate court determines that no error was committed in granting the new trial, it must render judgment absolute upon the right of the appellant; and thereupon an assessment of damages, or any other proceeding, requisite to render the judgment effectual, may be had in the marine court.

§ 3195. [Repealed Jan. 1, 1896; L. 1895, ch. 946.]

* So in original.

must be awarded, as if the action had remained in the court from which it was removed.

Co. Proc., part of § 33.

§ 3201. Service of subpoenas.

A subpoena, issued out of either of those courts, may be served upon a witness, at any place within the State. A warrant to apprehend a witness, for a failure to obey such a subpoena, may be directed to the sheriff of the county where the court is located, and executed by him within any county of the State. The sheriff is subject to the same liability, for a failure to serve or return it, as if it was issued out of the supreme court.

2 R. L. 505, ch. 85, § 18.

§ 3202. Effect of this title limited.

This title does not affect any provision of law conferring upon a judge, or upon the judges, of either of those courts, jurisdiction, power or authority, in an action brought in another court, or in a special proceeding.

proceedings taken in accordance with the provisions and requirements herein relating to attachments in courts of justices of the peace.

L. 1888, ch. 494.

§ 3205. Summons, where served.

The summons, in an action brought in the court, may be served at any place within the county of Westchester, but not elsewhere.

§ 3206. This title does not affect jurisdiction of the court, etc., in special proceedings.

This title does not affect any provision of law, conferring upon the court, or upon the city judge of Yonkers, jurisdiction, power, or authority, in a special proceeding; or conferring upon the city judge of Yonkers power or authority, in an action brought in another court.

[illegible]

[illegible] of complaint with summons: [illegible]

[illegible] of service

[illegible] of service of summons.

[illegible] of arrest: warrant of attachment: [illegible]

[illegible] action peoided.

[illegible] where title to real property is in [illegible]

[illegible] of this act, upon jurisdiction and [illegible]

[illegible] of complaint with summons [illegible]

[illegible] 3128 of this act applies to an action to [illegible] for breach of a contract, express or implied, [illegible] court of the city of New-York, in the [illegible] city of Albany, or in the justice's court of the [illegible]

[illegible] 1897, ch. 384, § 15; L. 1902, ch. 192, §§ 1 and 2.

[illegible] 3128. and proof of service.

In an action brought in either of those courts, th[illegible] and, in a proper case, a copy of the complaint, ma[illegible] by any person not a party to the action; except that [illegible] action is brought in a district court of the city of N[illegible] person, other than a constable or a marshal, servin[illegible] must be first empowered to do so, either by the ju[illegible] the attorney to the corporation, as now prescrib[illegible] Proof of service thereof, by such a person, must be [illegible] affidavit; which must state the particular place, time, [illegible] of service, and that the affiant knew the person so [illegible] the person mentioned and described in the summons, [illegible]

[illegible] L. 1902, ch. 192, §§ 1 and 2; L. 1897, ch. 384, § 15; L. [illegible] 15; L. 1904, ch. 469, § 2, and L. 1906, ch. 700; also § 3[illegible]

shall be in the discretion of the appellate court. An appeal from the judgment rendered in the justice's court of the city of Albany, or the justice's court of the city of Troy, may be taken in a case where an appeal may be taken to a county court from a judgment rendered by a justice of the peace as prescribed by title eight of that chapter, and in no other case. Such an appeal must be taken to the county court of the county wherein the court is located.

L. 1857, ch. 344, § 76; L. 1895, ch. 946.

§ 3214. Effect of this act, upon jurisdiction and proceedings.

Except as otherwise specially prescribed in this title, this act does not affect any statutory provision remaining unrepealed after this chapter takes effect, relating to the jurisdiction and powers of either of those courts; the appointment, qualification, tenure of office, powers, or duties of the justices, or of the clerk, or any other officer thereof; or the proceedings therein; except that a provision of this or any other statute, whereby a proceeding in an action, brought in either of those courts, or a special proceeding, brought therein, or before a justice thereof, is assimilated, either expressly, or by reference to another provision of law, to a proceeding, in an action or a special proceeding before a justice of the peace, is deemed to refer to the corresponding proceeding, as prescribed in chapter nineteenth of this act.

an execution, upon a judgment so docketed, may be issued, at the option of the judgment creditor, either by the county clerk, directed to the sheriff, or by the clerk of the district court, directed to a marshal. In the latter case it must be in the same form, and executed in the same manner, as if the judgment was not so docketed.

L. 1857, ch. 344, §§ 48, 51 and 52; L. 1895, ch. 946.

§ 3221. Enforcement of certain judgments in favor of working women.

In an action, brought in either of those courts, by a female, to recover for services performed by her, if the plaintiff recovers a judgment for a sum not exceeding fifty dollars, exclusive of costs, no property of the defendant is exempt from levy and sale, by virtue of an execution against property, issued thereupon; and, if such an execution is returned wholly or partly unsatisfied, the clerk must, upon the application of the plaintiff, issue an execution against the person of the defendant, for the sum remaining uncollected. A defendant, arrested by virtue of an execution so issued against his person, must be actually confined in the jail, and is not entitled to the liberties thereof; but he must be discharged, after having been so confined fifteen days. After his discharge, an execution against his person cannot be issued upon the judgment, but the judgment creditor may enforce the judgment against property, as if the execution, from which the judgment debtor is discharged, had been returned without his being taken.

L. 1867, ch. 516, §§ 1 and 2; L. 1878, chs. 33 and 175.

§ 3222. Costs in action by working woman.

Section 3131 of this act applies to an action therein specified, brought in a district court of the city of New-York; and costs must be allowed in such an action, as prescribed in that section, in addition to the costs allowed in a district court, by the statutory provisions remaining in force after this chapter takes effect.

L. 1871, ch. 936, part of § 1.

TITLE V.

The municipal court of the city of Rochester.

Sec. 3226. Provisions of chapter 19 generally applicable to the court and judges.
3227. Jurisdiction in actions upon contract.

§ 3226. Provisions of chapter 19 generally applicable to the court and judges.

The provisions of chapter nineteenth of this act, excluding titles tenth and eleventh thereof, apply to the municipal court of the city of Rochester, and to the judges thereof; except so far as they are inconsistent with the next section, or with any other special provision of statute, remaining unrepealed after this chapter takes effect. For the purpose of applying the same, the court is deemed a justice's court; each judge thereof is deemed a justice of the peace; and the city of Rochester is deemed a town of Monroe county.

L. 1876, ch. 196, part of § 4.

§ 3227. [Am'd, 1881.] Jurisdiction in actions upon contract.

The municipal court of the city of Rochester has jurisdiction of an action to recover damages upon or for breach of a contract, express or implied, other than a promise to marry, when the sum claimed does not exceed five hundred dollars.

§ 3239. Id.; upon appeal from interlocutory judgment or order.

Upon an appeal from an interlocutory judgment or an order, in an action, costs are in the discretion of the court, and may be awarded absolutely, or to abide the event, except as follows:

1. Where the appeal is taken from an order granting or refusing a new trial, and the decision upon the appeal refuses a new trial, the respondent is entitled, of course, to the costs of the appeal.

2. Where an appeal is taken from an order, refusing a new trial, and an appeal is also taken from the judgment rendered upon the trial, neither party is entitled to the costs of the appeal from the order.

Co. Proc., §§ 306 and 315.

§ 3240. [Am'd, 1881.] Id.; in a special proceeding.

Costs in a special proceeding, instituted in a court of record, or upon an appeal in a special proceeding, taken to a court of record, where the costs thereof are not specially regulated in this act, may be awarded to any party, in the discretion of the court, at the rates allowed for similar services, in an action brought in the same court, or an appeal from a judgment taken to the same court, and in like manner.

See L. 1840, ch. 270, § 3 (4 Edm. 682; 5 id. 132); also, §§ 2086, 2109, 2143, 2249, 2316, 2401, 2445, 2456, ante.

4. To either party, upon an ap
an inferior court; or upon an ap
the supreme court, or to the ge
the city of New-York, taken fro
ment, or from an order grantin
dered or made in the same co
supreme court, or upon an appl
of the supreme court for a new
verdict, rendered subject to the
exceptions are ordered to be he
term of the appellate division of

Before argument, twenty dolla

For argument, forty dollars.

For one general term of the cit
at which the cause is necessarily
term of the appellate division, no
court, at which the cause is neces
the term at which it is argued,
ten dollars

5. To either party, upon an ap

Before argument, thirty dollars

For argument, sixty dollars.

For each term, not exceeding t
calendar, excluding the term at
finally disposed of, ten dollars

Where a judgment is affirmed b
may, in its discretion, also award
the delay, not exceeding ten pe
the judgment; or, where it was
the amount of the original judg

Co. Proc., §§ 307 and 315; L. 1895,
L. 1896, ch. 226.

motion, may allow or disallow any item, objected to before the taxing officer, in which case, it has the effect of a new taxation; or it may direct a new taxation before the proper officer, specifying the grounds or the proof, upon which the item may be allowed or disallowed by him.

§ 3266. Duty of taxing officer.

An officer, authorized to tax costs in an action or a special proceeding, must, whether the taxation is opposed, or not, examine the bills presented to him for taxation; must satisfy himself that all the items allowed by him are correct and legal; and must strike out all charges for fees, other than the prospective charges expressly allowed by law, where it does not appear that the services, for which they are charged, were necessarily performed.

2 R. S. 653, § 5 (2 Edm. 672).

§ 3267. Affidavit respecting disbursements.

A charge, for the attendance of a witness, cannot be allowed without an affidavit, stating the number of days of his actual attendance; and, if travel fees are charged, the distance for which they are allowed. A charge, for a copy of a document or paper, cannot be allowed, without an affidavit, stating that it was actually and necessarily used, or was necessarily obtained for use. An item of disbursements, in a bill of costs, cannot be allowed, in any case, unless it is verified by affidavit, and appears to have been necessarily incurred, and to be reasonable in amount.

Id., § 7; Co. Proc., part of § 311.

the legal fees for such publication was at the same time ter
and that the application was refused. Such an affidavit
sumptive evidence of the facts stated therein.

2 R. S. 648, § 49.

§ 3295. Comptroller to audit certain charges.

Where the fees or other charges of an officer are cha
to the State, they must be audited by the comptroller, a
on his warrant, except as otherwise specially prescribed b

2 R. S. 651, § 16 (2 Edm. 671).

in the constitution and laws of the State. The word, "no
as used, with respect to procuring the attendance of a ju
equivalent to the word, "summon", as used in the like
nection, in the same constitution and laws.

20. The word, "action", refers to a civil action; the
"judgment", to a judgment in such an action; the term, "s
proceeding", to a civil special proceeding; the word, "order
an order made in such an action or special proceeding; the
"an action of ejectment", to an action to recover the imm
possession of real property.

21-24. [Repealed, 1892, ch. 677.]

L. 1876, ch. 449, § 2; Co. Proc., § 466; id., § 462; id., § 468; id., § 464; L. 1875,
2 R. S. 650, § 4 (2 Edm. 669).

§ 3383. Repealing clause; limitations.

So much of all acts and parts of acts as prescribe a method of procedure in proceedings for the condemnation of real property for a public use is repealed, except such acts and parts of acts as prescribe a method of procedure for the condemnation of real property for public use as a highway, or as a street, avenue, or public place in an incorporated city or village, or as may prescribe methods of procedure for such condemnation for any public use for, by, on behalf, on the part, or in the name of the corporation of the city of New-York, known as the mayor, aldermen, and commonalty of the city of New-York, or by whatever name known, or by or on the application of any board, department, commissioners or other officers acting for or on behalf or in the name of such corporation or city, or where the title to the real property so to be acquired vests in such corporation or in such city; and all proceedings for the condemnation of real property embraced within the exceptions enumerated in this section are exempted from the operation of this title.

§ 3384. When act takes effect.

This title shall take effect on the first day of May, one thousand eight hundred and ninety, and shall not affect any proceeding previously commenced.

§ 3417. Discharge of mechanics' lien, by order of court.

A mechanic's lien on real property may be vacated and cancelled by an order of a court of record. Before such order shall be granted a notice shall be served upon the lienor, either personally or by leaving it at his last-known place of residence, with a person of suitable age, with directions to deliver it to the lienor. Such notice shall require the lienor to commence an action to enforce the lien, within a time specified in the notice, not less than thirty days from the time of service, or show cause at a special term of a court of record, or at a county court, in a county in which the property is situated, at a time and place specified therein, why the notice of lien filed should not be vacated and cancelled of record. Proof of such service and that the lienor has not commenced the action to foreclose such lien, as directed in the notice, shall be made by affidavit, at the time of applying for such order.

§ 3418. Judgments in actions to foreclose liens on account of public improvements.

If, in an action to enforce a lien on account of a public improvement, the court finds that the lien is established, it shall render judgment directing the municipal corporation to pay over to the lienors entitled thereto for work done or material furnished for such public improvement, and in such order of priority as the court may determine, to the extent of the sums found due the lienors from the contractors, so much of the funds or money which may be due from the state or municipal corporation to the contractor, as will satisfy such liens, with interest and costs, not exceeding the amount due to the contractor.

§ 3419. Judgment in actions to foreclose a mechanic's lien on property of a railroad corporation.

If the lien is for labor done or materials furnished for a railroad corporation, upon its land, or upon or for its track, rolling stock or the appurtenances of its railroad, the judgment shall not direct the sale of any of the real property described in the notice of the lien, but when in such case, a judgment is entered and docketed with the county clerk of the county where the notice of lien is filed, or a transcript thereof is filed and docketed in any other county, it shall be a lien upon the real property of the railroad corporation, against which it is obtained, to the same extent, and enforcible in like manner as other judgments of courts of record against such corporation.

§ 3. In a case specified in sections one and two of this act, a party may demur to the pleadings of the adverse party, or, if it is a complaint, to one or more distinct and separate causes of action, where it is not sufficiently explicit to be understood; or where it does not state facts sufficient to constitute a cause of action or counterclaim, as the case may be. If the court deems the demurrer well founded, it must permit the pleading to be amended; and if the party fails to so amend, the defective pleading, or part of a pleading, demurred to, must be disregarded. If the court deems the demurrer not well founded, it must permit the party making it, to plead over at his election. (As am'd by L. 1889, ch. 472.)

§ 4. In case the defendant fails to answer said complaint, as hereinbefore provided, at the time of the return of said summons, he shall be deemed to have admitted the allegations of the complaint as true, and the court shall, upon filing the summons and complaint, with due proof of the service thereof, enter judgment for the said plaintiff and against the defendant, for the amount demanded in such complaint, with costs, without further proof. (As am'd by L. 1889, ch. 472.)

§§ 3 and 4 in effect June 13, 1889, as am'd.

STATUTORY CONSTRUCTION LAW.

LAWS OF 1892, CHAP. 677.

AN ACT relating to the construction of statutes constituting chapter one of the general laws.

Approved by the Governor May 18, 1892. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 1 OF THE GENERAL LAWS.

The Statutory Construction Law.

Section 1. Short title; extent of application.
2. Property.
3. Real property.
4. Personal property.
5. Person.
6. Judge.
7. Lunacy; idiocy.
8. Gender; number; tense.
9. Heretofore; hereafter; now.
10. Last; preceding; next; following.
11. Folio.
12. Writing; signature.
13. Seal.
14. Oath; affidavit; swear.
15. Acknowledge; acknowledgment.
16. Bond; undertaking.
17. Choose; elect; appoint.
18. Board composed of one person.
19. Meeting; quorum; powers of majority.
20. Service of notice upon board or body.
21. County clerk; register.
22. Village.
23. State; territory.
24. Public holiday; half-holiday.
25. Year.
26. Month.
27. Day; mode of computing days; night-time.
28. Standard time.
29. Civil and criminal codes.
30. Laws of England and of the colony of New York.
31. Limiting the effect of repealing statutes.
32. Effect of repeal and re-enactment.
33. Effect of revision upon laws passed at same session or before revision takes effect.
34. Alterations of titles and head notes.
35. Laws repealed.
36. Time of taking effect.

Section 1. Short title; extent of application.

This chapter shall be known as the statutory construction law, and is applicable to every statute unless its general object or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended from that required to be given by this chapter.

§ 2. Property.

The term property includes real and personal property.

substance, or of the wi
the signature.

A seal of a court, pu
directly upon the inst
wafer, wax or other s
paper or other similar
other adhesive substa
cuted, in the corporat
have adopted a corpor
poration under their p
executed under the co

§ 14. Oath; affdavi

The term oath and
law of attesting the t

The term swear inch
ministering an oath.
it may be sworn to be
the acknowledgment
officer is specified befo

§ 15. Acknowledge

When the execution
or required by law to
entitle it to be filed or
ment may be taken or
there authorized to t
execution of a deed of
a county clerk's office,
manner as such ackno

The term acknowled
reference to the execu
a deed of real property
of this section be eithe

quent session begun before any such chapter takes effect, s not be deemed repealed, unless specifically designated in the pealing schedule of such chapter.

§ 34. Alterations of titles and head notes.

If the title of any article or other division of a statute, or head note of a section shall be amended or repealed in the bo the statute, or if a new article or other division having a tit a new section having a new head note be added to a statute, corresponding title or head note, if any, in an abstract of cont at the beginning of the article or other division of the sta shall be deemed to be correspondingly amended or repealed, though there be no express reference thereto.

§ 35. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, portion specified in the last column is repealed.

§ 36. Time of taking effect.

This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

	Sections repeal
Revised Statutes, part I, chapter 8, title 8	16.
Revised Statutes, part I, chapter 19, title 1	1, 2, 3, 4, 5.
Revised Statutes, part II, chapter 4, title 2	3.
Revised Statutes, part II, chapter 4, title 3	9.
Revised Statutes, part III, chapter 8, title 17	27.
Revised Statutes, part III, chapter 10, title 4	4.
Revised Statutes, part IV, chapter 2, title 8	16.
Laws 1828, second meeting, 51st session, chapter 20	9, 10, 11.
Laws 1828, second meeting, 51st session, chapter 21	3 and 4.
Laws 1857, chapter 536	3.
Laws 1874, chapter 321	All.
Laws 1877, chapter 466	27.
Laws 1884, chapter 14	All.
Laws 1886, chapter 21	20.
Code of Civil Procedure	29, 788, 900 and divisions 6, 7, 8, 17, 21, 22, 23 and of section 3[illegible]
Code of Criminal Procedure	955, 956, 957.
Penal Code	261, 500, and divisions 9, 10, 12, 13, 14 and section 718.

approval of bond or undertaking.....
reference to approve, etc.....
for judgment .....
by default.....

Arbitration:

limitation of action, where claim has been submitted t
subpoena in, how issued and served.....
submission to, when cannot be made .....
what controversies, and how.....
appointment of additional arbitrator, or umpire.....
time for hearing, adjournment, etc.....
arbitrators to be sworn.....
attendance of witnesses, etc .....
all the arbitrators to meet, when majority may award;
award; to be authenticated, etc.....
motion to confirm.....
to vacate .....
to modify or correct.....
motions, when to be made; notice thereof.....
costs on vacating .....
judgment on; when and how entered, costs.....
judgment-roll; docket of judgment.....
effect of; how enforced.....
appeal from order or judgment.....
effect of party's death, lunacy, etc.; proceedings there
revocation of submission; how made .....
liability of party for fees, etc.....
limitation of recovery against him.....
application of this title .....

Arrest. See, also, Bail.

on Sunday, when allowed.....
for non-payment of interlocutory costs, when allowed..
of money adjudged due on contract, etc., forbidden.
prisoner, custody of .....
or officer in transit, not liable to. .....
entitled to jail liberties

INDEX.

Certiorari, to inquire into Cause of Detention — Continued.

when writ may be made returnable before another judge 2031
writ must be obeyed, etc. 2032
when writ to issue without application 2033
return to writ; its contents 2034
proceedings on disobedience of writ 2035
precept to bring up prisoner 2036
power of county may be called 2037
when prisoner to be discharged in civil cases 2038
legality of certain mandates, under which prisoner held, not to be inquired into 2039
notice of hearing for discharge of prisoner to be given in certain cases 2040
when to issue on application for habeas corpus 2041
proceedings upon return of writ 2042
id.; when discharge to be granted; when proceedings to cease 2043
when does not prevent habeas corpus and vice versa 2044
bail on, when and how ordered 2045
id.; by whom and how taken 2046
discharge of prisoner bailed 2047-2049
when such prisoner may and may not be re-imprisoned 2050
penalty for violation of last preceding provision 2051
id.; for concealing, etc., prisoner for purpose of avoiding writ 2052
id.; for aiding, etc., in such concealment, etc. 2053
warrant to bring up prisoner about to be removed, etc. 2054
when offender in such case to be arrested 2055
execution of such warrant; proceedings to relieve prisoner 2056
proceedings to punish offender 2057
penalty of refusing copy of process 2058

Certiorari to review Determination of inferior Tribunal:

is a State writ; may be styled writ of review 2060
person served with, must obey writ; fees to be paid or tendered 2061
cases where writ may issue 2120
it cannot issue 2121, 2122
when to issue from supreme court or superior city court 2123
from any other court 2124
limitation of time for review 2125
in case of disability 2126
application for writ; where and how made 2127
when notice is necessary; service thereof 2128
to whom writ directed 2129
mode of service of writ 2130
stay of proceedings on issuing of 2131
when and where writ returnable 2132
subsequent proceedings, as in an action 2133
return to; when and how made 2134
how compelled; fees for making 2135
after term of office expired 2136
when third person may be brought in 2137
hearing upon return to 2138
affidavits 2139
questions to be determined 2140
final order 2141
hearing upon, restitution may be awarded 2142
costs 2143
entry and enrollment of final order 2144
effect thereof 2145
"body or officer," and "determination," what to include 2146
application of foregoing provisions to certain cases 2147
to civil cases only 2148

Challenge:

peremptory 1176
to the array 1177, 1178
in penal actions 1179
how tried, etc. 1180

See, also, Trial by Jury.

Change:

of name ..... [illegible]

INDEX.

Continuance:

by one judge, of proceedings commenced before another, in New-York 26

of action, after transfer of interest 751
after death of sole party 751
See Abatement; Assignment.

Contract:

as to real property, county court, etc..... 34
action upon, when to be brought within six years..... 352
counterclaim in action on..... 504
for real property may be reached by judgment creditor's action.... 1874
how applied 1875
action to compel conveyance by lunatic, infant, etc..... 2345
how sold in proceedings to pay decedent's debts..... 2779-2783

Contribution:

action for, between owners of real property after sale under execution 1481
when part owner redeems from sale under execution 1482
order of 1483
how enforced by means of original judgment..... 1484
lien of original judgment, how preserved 1485
entry to be made on docket 1486

Controversy, Settlement of. See Submission of Controversy; Arbitration.

Convention:

of judges to make general rules of practice. See General Rules of Practice.
of judges to appoint supreme court reporter. See Supreme Court.

Conversion:

of public funds, property, etc., by public officer, action for. See Public Funds.

Conveyance:

of real property by sheriff, court may order 718
acknowledged, etc., and record thereof, is evidence..... 935
certificate of acknowledgment may be rebutted or disproved..... 936
of real property in another State, evidence of 946, 947
on judicial sale of real property, effect of 1242
to state what party's interest sold 1244
effect of, under judgment of foreclosure..... 1622
in proceedings for sale, etc., of infant's, etc., real estate..... 2356
not necessary to pass title on foreclosure of mortgage by advertisement 2406
made after filing petition for voluntary dissolution of corporation is void 2439
under order to sell real property to pay decedent's debts..... 2776-2783
action to compel, of real property of infant, lunatic, etc. See Infant; Lunatics, Idiots, and Habitual Drunkards.

Copyright:

of statement of facts, and of head-notes, etc., in court of appeals reports 212

Coroner:

punishment of, for misconduct 14
powers and duties, where sheriff is a party..... 172
mandate, how directed to, and how executed..... 173
arrest of, by sheriff 174
duties and liabilities thereupon 175-177
may prosecute or assign sheriff's bond for jail liberties..... 178
duties of, on an arrest, when sheriff is plaintiff..... 179, 180
liability for escape 181
acting as sheriff, to obey rules as to outgoing sheriff..... 185
limitation of actions against 382, 389
when execution to issue to; duties, etc., thereon ..... 1[illegible]
provision as to redemption, etc., on execution sales, when to apply to. 1[illegible]

INDEX.

Court of Claims:
is a court of record..... [illegible]
how constituted..... [illegible]
jurisdiction..... [illegible]
rules and procedure..... [illegible]
officers..... [illegible]
seal of court..... [illegible]
sessions, duty of sheriff..... [illegible]
judgments..... [illegible]
duty of attorney-general, and superintendent of public works..... [illegible]
record of proceedings; report..... [illegible]
expense of procuring testimony on commission..... [illegible]
annual report to comptroller..... [illegible]
costs not to be taxed..... [illegible]
appeals..... [illegible]
time and manner of taking appeal..... [illegible]
case on appeal..... [illegible]
preference on appeals..... [illegible]
salary of judges..... [illegible]
salaries of officers..... [illegible]

Court-House:
sale of liquors in, prohibited..... [illegible], [illegible]
trial elsewhere than at, may be by stipulation, in non-injury causes.. [illegible]
when county judge to appoint temporary..... [illegible]
terms of courts to be held at..... [illegible], [illegible]

Courts. See, also, Courts not of Record; Courts of Record.
referred to in this act..... 1-3
jurisdiction and powers of, preserved..... 4
sittings of, are public, except, etc..... 5
not to sit on Sunday, except, etc..... 6
adjournment of, on Saturday, to be to what day..... 6
writs, process, etc., of, requisites of..... [illegible]
seals of (see, also, Seal)..... 27-30
adjournments of..... 31-35
change of place for holding..... 36-43
abatement not produced by failure or adjournment of..... 44
judges not to practice..... [illegible]
attendants on..... [illegible]
what, included in expression "body or officer," in provisions as to certiorari to review, etc..... [illegible]
punishment of misconduct occurring at a term of the circuit..... [illegible]
jurisdiction of. See titles of the several courts.

INDEX.

Issue:
of marriage dissolved because former husband or wife living..... [illegible]
on ground of idiocy or lunacy ..... [illegible]
annulled on ground of fraud, etc..... [illegible]
action for divorce, legitimacy; when not affected by judgment.. 1730, [illegible]
support of ..... [illegible]
in action for separation ..... [illegible]
in matrimonial actions, court to direct as to support..... 1771-[illegible]
order enforced by punishment, as for contempt..... [illegible]
born after will may bring action to recover his share of property.. [illegible]

Issues, in Pleading:
presented by the pleadings, arise when, kinds of ..... [illegible]
when need not be tried ..... 985, [illegible]
filing note of ..... [illegible]
how arranged on calendar ..... [illegible]
how brought to trial ..... [illegible]

Issues of law and of fact:
how they arise; issue of law on demurrer ..... 963, [illegible]
must be regularly tried, unless, etc..... [illegible]
issue of law and fact arising in same action, how disposed of.. 966, [illegible]
must be tried by a jury, when..... [illegible]
See Trial by Jury.
must be tried by the court, when ..... [illegible]
See Trial by the Court or a Referee.
provisions relating to, applied to counterclaim, when..... [illegible]
at what terms to be tried ..... 297, [illegible]
notice of trial and note of issue ..... [illegible]
order of, on calendar ..... [illegible]
issue of law has preference, when no jury in attendance..... [illegible]
decision of court, or report of referee on trial of..... [illegible]
of fact and of law arising in one action; court may order severance, etc. ..... [illegible]
judgment on ..... 1221-[illegible]
triable by jury in action for partition ..... [illegible]
costs when issue of law and of fact are joined..... 3232, [illegible]
several issues of fact joined ..... [illegible]

Special issues for trial by jury:
feigned issues abolished, and order substituted..... [illegible]
when trial must and may be ordered ..... 970, [illegible]
not embraced in order, how tried ..... [illegible]
how settled and tried, in action to annul marriage ..... [illegible]
to be prepared and settled, in action for divorce ..... [illegible]
on opposition to insolvent's discharge from debts..... [illegible]
on petition for exemption, etc., from imprisonment..... [illegible]

J.

Jail:
custody of civil prisoners in. See Prisoner.
prisoner may be conveyed to, through another county..... [illegible]
for civil prisoners to remain the same in New-York..... [illegible]
in other counties until changed ..... [illegible]
sheriff may use either of several jails ..... [illegible]
separation of civil and criminal prisoners..... [illegible]
male and female prisoners ..... [illegible]
physician; how appointed, etc..... [illegible]
removal of sick prisoners to hospital, from..... [illegible]
sale and use of liquors in, regulated..... [illegible]
service of papers on prisoner in ..... 131, [illegible]
prisoner committed by U. S. courts, received into..... [illegible]
change of, when unsafe, destroyed, etc..... 135-[illegible]
jail liberties ..... 138-140, [illegible]
revocation of such change, and its effects..... 136, 141-[illegible]
removal of prisoners in case of fire ..... [illegible]
liberties of. See Jail Liberties.
place of sheriff's imprisonment deemed a..... [illegible]
to be delivered to new sheriff with prisoners..... [illegible]
how delivery enforced ..... [illegible]

Jail Liberties:
in case of temporary change of jail ..... 138-140, [illegible]
in the several counties, what are ..... 145, [illegible]
how laid out ..... [illegible]

transcript of judgment, [illegible]; on
only by county clerk .....
See post, sub-heading Executions
to state when execution may issue against ge
in action for a chattel .....
judgment against joint debtors; part not [illegible]
transcript and docketing; action to charge
moned .....
docketing judgment in another county .....
judgment on appeal See post, sub-heading A
to specify items of costs .....
when no costs in action upon .....
how proved .....

Executions:
county clerk to issue upon docketed judgment..
justice s execution, when may issue .....
general requisites of .....
upon judgment for money .....
renewal of .....
property exempt from .....
indorsement of levy; notice of sale .....
mode of levy and sale .....
return of execution .....
against the person, imprisonment of judgm
judgment debtor's discharge therefrom ....
affidavit, discharge .....
penalty for not discharging .....
affidavit a defence to action for escape .
discharge not to affect judgment .....
upon judgment in action for a chattel .....
action against constable for not returning exec
constable not to act under execution after retur
action against constable for money collected .
duty of constable whose term of office has ex
execution upon judgment docketed with county

Appeals:
generally:
justice's judgment reviewed only by appeal
who may appeal; to what court appeal to
appeal, when and how taken .....
service of notice upon justice; payment of
respondent .....
amendment, etc., when allowed, etc.....
stay of execution upon judgment, undertaki
how proceedings stayed .....
when justice is dead, etc.....

INDEX.

Supplementary Proceedings — Continued.

warrant of arrest after the order has been made..... 2438
how vacated, etc..... 2439
undertaking may be required, etc..... 2440
order to examine person having property, etc., of judgment debtor.. 2441
either order may require attendance before a referee..... 2442
reference may be ordered at any time..... 2443
proceedings upon examination..... 2444
referee to be sworn..... 2445
order permitting person indebted to pay debt to sheriff..... 2446
delivery of money or property to sheriff or receiver..... 2447
duty, powers, etc., of the sheriff..... 2448
how money or property applied to pay the judgment..... 2449
balance to be paid or delivered to judgment debtor, etc..... 2450
judge may enjoin transfer, etc., of property..... 2451
service of certain orders 2452
of a warrant 2453
how proceeding discontinued or dismissed..... 2454
costs to judgment creditor 2455
debtor, bailee, etc. 2456
disobedience to order; how punished 2457
upon what judgment, and to what county, the execution must have issued 2458
in what county judgment debtor, bailee, etc., must attend..... 2459
no excuse from answering that answer tends to conviction for fraud. 2460
proceedings when judgment is against joint debtors..... 2461
commenced before one judge may be continued before another.. 2462
cases where this chapter is not applicable; what property cannot be reached 2463
receiver, when and how to be appointed 2464
notice to other creditors of application..... 2465
only one appointed; former receivership extended..... 2466
order to be filed and recorded 2467
when property is vested in 2468
title to personal property extended by relation 2469
county clerk to record order, etc.; penalty for neglect..... 2470
to be subject to control of court..... 2471
on decree of surrogate's court, docketed, etc..... 2554

Supreme Court:

is a court of record 2
may direct county clerk to destroy certain papers..... 21
seal 27
appellate division may suspend or remove attorney or counsellor... 67
attendants upon sittings of 93, 95, 242
general jurisdiction of 217
may change place of trial of actions in other courts, when..... 218
judicial departments 218
justices of appellate division; designation, term of office, vacancies, etc. 219
appointment of reporter 220
justices of appellate division may act without department..... 224
disability proceeding, in case of 231
appellate division, times and places of holding, how appointed..... 226
associate justice, when to preside 228
number of justices to sit 230
re-argument ordered, if three justices do not concur..... 230
officers required to attend 242
duty of sheriff, as to rooms, etc..... 242
fees of officers attending, how paid..... 243
special and trial terms, places for holding..... 232, 238
publication of appointments 233
must be held by one judge 229
governor may appoint extraordinary terms 234
general powers and duties of justices..... 235

failure of a term, governor, how to prevent..... 237
adjournment of special term to judge's chambers; trials thereat... 239
powers of justices at chambers, who may exercise..... 241
reporter of, papers and opinions to be furnished to..... 248
duties of; no salary 249
publication and price of supreme court reports..... 249, 250
stenographer's fees ..... [illegible]
in counties of second district ..... [illegible]
in the other districts ..... [illegible]

INDEX.

Yonkers:

application in summary proceedings to recover land may be made to city judge of 22

Yonkers, City Court of:

is a court of record .....
jurisdiction in civil action ..... §203, 22
summons, where may be served 22
jurisdiction of court and judge, how affected by this act..... 22
non-resident may be required to file security for costs in..... §268, 22